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Enforcement of Foreign Judgments

Fundamental Principles [England & Wales]

2023



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to apply for recognition and enforcement of a court judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: The procedure is set out in Part 74 of the Civil Procedure Rules (CPR):

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part74>

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Multilateral arrangements including the Recast Brussels Regulation (EU) 1215/2012, the 2001 Brussels Regulation (EC) 44/2001, the 2007 Lugano Convention (which replaced the 1988 Lugano Convention and applies to judgments from Iceland, Norway and Switzerland in which proceedings were instituted before 31 December 2020), the Brussels Convention (relating to judgments from certain dependent territories of EU Member States given in proceedings instituted before 31 December 2020) and the 2005 Hague Convention on Choice of Court Agreements. The recently introduced Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague Judgments Convention) came into force on 1 September 2023. The UK is not yet a signatory to this convention.

Bilateral arrangements include the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933. These generally apply to the Commonwealth (e.g. Australia, Canada, India, South Africa) and some other countries.

The Civil Jurisdiction and Judgments Act 1982 applies to the enforcement of judgments from Scotland or Northern Ireland.

If none of these apply then the judgment must be enforced under the common law and fresh legal proceedings in England and Wales are required, usually with an application for summary judgment.

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer: Yes. The principle is that a claimant who has obtained a judgment from one of the member states can enforce in the other member states without having to begin separate proceedings on the merits of a claim.

For judgments on civil and commercial matters in court proceedings commenced on or after 10 January 2015, the procedure is governed by the Recast Brussels Regulation. The Recast Brussels Regulation states that a judgment given in a member state shall be recognised in other member states without any special procedure being required.

Unlike the previous 2001 Brussels Regulation, the Recast Brussels Regulation provides that a judgment given in a member state which is enforceable in that member state shall be enforceable in other states without a declaration of enforceability (*exequatur*) being necessary.

The general principle is that the procedure for the enforcement of judgments given in another member state is governed by the law of the member state in which enforcement is sought (Article 41(1)).

The 2001 Brussels Regulation continues to apply to civil and commercial matters where court proceedings were commenced prior to 10 January 2015. The courts of the enforcing member state must first declare the judgment to be enforceable and so an application must be made locally (in England to the High Court – Kings Bench Division). Judgments obtained prior to 10 January

2015 are becoming increasingly rare due to the time that has since elapsed.

For proceedings instituted after 1 January 2021, the Hague Convention on Choice of Court Agreements applies to civil and commercial matters (with a number of exceptions) where there is an exclusive jurisdiction clause and where there has been a judgment on the merits.

The Brussels Convention applies to judgments from Gibraltar and some dependent territories of EU member states.

D. Average duration of enforcement procedure

1. What is the average length of time for this kind of procedure?

Answer: Usually 2 to 5 months, depending on whether it is challenged.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a court in your country deny recognition and enforcement of a foreign court judgment? If YES: what type of reasons may justify denial?

Answer: Yes.

Where the Recast Brussels Regulation applies, reasons to refuse recognition and enforcement of a judgment are as set out in Articles 45 and 46:

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment was given in default of appearance, 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, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

- (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or*
- (ii) Section 6 of Chapter II.*

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Where the 2001 Brussels Regulation applies, reasons to deny enforcement include:-

- Failure to comply with the formalities as set out in Articles 53-54 of the 2001 Brussels Regulation.

- One of the grounds set out in Articles 34 and 35 of the 2001 Brussels Regulation (which largely correlate with Article 45 of the Recast Brussels Regulation).

Where the Hague Convention Choice of Court Agreements applies:

- The enforcing court must be satisfied that the original court was designated in an exclusive choice of court agreement.
- The foreign judgment must be enforceable in its state of origin.
- However, the enforcing court cannot review the merits of the judgment.

Article 9 of the Hague Convention Choice of Court Agreements provides that recognition or enforcement may be refused if:

- a) *the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;*
- b) *a party lacked the capacity to conclude the agreement under the law of the requested State;*
- c) *the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,*
 - i) *was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or*
 - ii) *was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;*
- d) *the judgment was obtained by fraud in connection with a matter of procedure;*
- e) *recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State;*

- f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or*
- g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.*

Where bilateral arrangements apply, then the provisions of those Acts apply. For example:

Section 9(2) of the Administration of Justice Act 1920 provides:

(2) No judgment shall be ordered to be registered under this section if—

(a) the original court acted without jurisdiction; or

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(d) the judgment was obtained by fraud; or

(e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

Section 4(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 provides:

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(a) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or

(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or

(iv) that the judgment was obtained by fraud; or

(v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

In relation to common law claims, i.e. where the enforcing state is not subject to specific multilateral or bilateral arrangements, reasons to deny recognition and enforcement can include:

- Lack of jurisdiction of the foreign court.
- Recognition of the judgment would be contrary to English public policy or violate the Human Rights Act 1998.
- The judgment was not final and conclusive on the issue.
- The court gave judgment in breach of a jurisdiction or arbitration clause.
- The judgment was obtained by fraud.
- The judgment was in conflict with a prior English judgment.
- The judgment to be enforced is not for a fixed sum of money.
- The judgment involves the enforcement of a foreign penal or revenue law.

- The judgment was awarded in a manner contrary to natural or substantive justice.

In relation to all of the above, a court can refuse recognition/enforcement:

- Where the defendant has not been properly served.

B. Costs and Expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: Court fees

Translation fees

Lawyers' fees, which will vary depending on the complexity of the matter and whether the procedure is challenged by the other party.

Process server's fees if the judgment is served on the other party by a process server (recommended).

Costs of enforcement, which will depend on the method of enforcement used.

III. FORMAL REQUIREMENTS

A. Time Limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: There are no set limitation periods under the 2001 Brussels Regulation, the Recast Brussels Regulation, the Brussels Convention or the 2007 Lugano Convention.

The Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) Regulations 2015/1644, which implement the Hague Convention into English law, provide at regulation 4B(3) that: "*A judgment which is required to be*

recognised and enforced under the 2005 Hague Convention must be registered without delay...”

Under s.9(1) of the Administration of Justice Act 1920, an application must be made to the English High Court within twelve months after the date of the foreign judgment (or such longer period as may be allowed by the court) to have the judgment registered in the English court.

Under s.2(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933, an application must be made to the English High Court within 6 years of the date of the foreign judgment (or the date of the last judgment, if there have been appeal proceedings).

Under the common law, the Limitation Act 1980 applies. Section 24(1) provides that an action cannot be brought on any judgment after the expiration of six years from the date on which the judgment became enforceable.

B. Final and Definitive Court Judgment: Provisional Enforcement

- 1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

Answer: Yes. There is no concept of provisional enforcement under English law. The only similar concept is that of a freezing injunction, which will freeze a party's assets so that he cannot deal with them or seek to put them out of the reach of creditors.

However, a freezing injunction is complex and expensive to obtain, and gives a claimant no priority over the other party's assets in comparison to other creditors – it merely freezes the assets.

C. Necessary Requirements

- 1. What necessary requirements must the foreign court judgment fulfil to be recognised and enforced?**

Answer:

- EU Regime – when the judgment has been certified / declared enforceable in another Member State.
- Any requirements set out in multilateral or bilateral treaties / statutes.
- Common law:
 - a) The judgment must be final and conclusive in the court from which it came.
 - b) The judgment must be for an ascertainable and definite sum of money.
 - c) The judgment must be given by a court regarded under English law as competent to do so.

D. Other formal requirements: Court fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes. There will be a court fee payable for the application to register the judgment, where registration is necessary. There will also be further fees depending on the method of enforcement chosen.

For judgments enforced under the common law, there will be a court issue fee for the issuing of fresh English proceedings for payment of the judgment debt. If an application is made for summary judgment, a further court fee in respect of the application will also be payable.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: Where registration of the judgment is necessary, the application must be made to the King's Bench Division of the High Court.

B. Information requirements for the application to enforce a foreign judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: Generally speaking, the information required includes the following:

- The name of the judgment creditor and their address for service within the jurisdiction.
- The name of the judgment debtor and their address or place of business, if known.
- The grounds on which the judgment creditor is entitled to enforce the judgment.
- In the case of a money judgment, the amount in respect of which it remains unsatisfied.
- Where interest is recoverable, both (i) the amount of interest which has accrued up to the date of the application; or (ii) the rate of interest, the date from which it is recoverable and the date on which it ceases to accrue.

C. Evidential requirements for the application to enforce a foreign judgment

1. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer:

There is no need to register a foreign judgment under the Recast Brussels Regulation. For a judgment to be enforced under the Recast Brussels Regulation:

- The judgment creditor must provide:
 - a) A copy of the judgment which satisfies the conditions necessary to establish its authenticity.
 - b) A certificate from the court of origin issued in the form set out at Annex 1 to the Recast Brussels Regulation certifying that the judgment is enforceable and containing an extract of the judgment as well as relevant information on the recoverable costs of the proceedings and the calculation of interest.
 - c) In some cases, a translation or transliteration may be necessary.
 - d) Where the measure was ordered without the judgment debtor being summoned to appear, proof of service of the judgment.
- The certificate must be served on the judgment debtor prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

Greater detail can be found in Articles 39-44 of the Recast Brussels Regulation, CPR 74.4, CPR 74.9 and CPR Practice Direction 74A.

For enforcement under the 2001 Brussels Regulation, the following documents will be required:

- Form N244 application notice
- Supporting witness statement
- Authenticated copy of the judgment
- Translation (if necessary)
- Certificate in the form of Annex V to the 2001 Brussels Regulation
- Written statement regarding interest
- Court fee.

For a judgment to be enforced under the Hague Convention Choice of Court Agreements, the party seeking to enforce the judgment must provide the following documents:

- a complete and certified copy of the judgment;
- a copy of the exclusive jurisdiction agreement;
- in the case of a default judgment, a document proving that the defaulting party was notified of the document which instituted the proceedings;
- any documents necessary to establish that the judgment has effect or is enforceable in France or to verify that the conditions for enforcement have been met
- English translations of all of the above.

Greater detail can be found in Article 13 of the Hague Convention on Choice of Court Agreements and CPR 74.4.

Bilateral treaties / statutes – the requirements are set out in CPR 74.4.

Common law – claim form (Part 8), supporting witness statement, authenticated copy of judgment, translation (if applicable) and court fee.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer:

- Registration, where necessary
- Period for challenge
- Enforcement proceedings, e.g. seizure of goods, charging order, third party debt order, winding up.

E. Opposition of the Defendant

1. Can a defendant oppose this enforcement application?

Answer: Yes

- 2. Are there a limited number of reasons for the defendant to oppose the enforcement of the court judgment? If YES: what are those reasons?**

Answer: See answer to II A above.

F. Appeal and its consequences in this procedure

- 1. Is it possible to appeal a court decision to recognise and enforce a foreign decision?**

Answer: Yes. CPR 74.8 provides that permission is not required to appeal against the granting or the refusal of registration. The appellant's notice must be served, where the appeal is against the granting of registration, within one month of service of the registration order, or two months where service is to be effected on a party not domiciled within the jurisdiction.

- 2. Can this appeal suspend the enforcement?**

Answer: Under the Recast Brussels Regulation, no declaration of enforceability is required from the English court to enforce the foreign judgment in England and Wales.

Under Article 49 of the Recast Brussels Regulation, the decision on an application for refusal of enforcement may be appealed against by either party. Under Article 51, the court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

Under Article 43 of the 2001 Brussels Regulation, the decision on the application for a declaration of enforceability may be appealed against by either party. Under Article 46.1, the court with which an appeal is lodged under Articles 43 or 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an

appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

The Hague Convention on Choice of Court Agreements does not affect the application of the procedural law of contracting states. Accordingly, appeals are unaffected by the convention.

Other treaties / statutes – refer to their terms.

Common law – unless the court orders otherwise, an appeal shall not operate to stay enforcement of the original decision.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: Generally the starting point is that the court will order that the judgment debtor pays the judgment creditor's costs. However, the court will also take into account the conduct of the parties when deciding who should pay the costs of the application.

V. RECOVERY OF THE DEBT

A. Means of enforcement

1. What type of assets are subject to enforcement of the court's judgment?

Answer: All available assets of the debtor:

- Charging order over land / property / shares, potentially with an order for sale
- Seizing of debtor's property by High Court Enforcement Office for sale to raise funds to satisfy the debt
- Earnings by an attachment of earnings order
- Third party debt order

- Other assets (except those essential for the debtor to work / live) by insolvency

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: Going forward, the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the Hague Judgments Convention 2019), which provides for the establishment of a single international framework for the recognition and enforcement of civil and commercial judgments (not limited to exclusive jurisdiction clauses), may be of use. The objective of the Hague Judgments Convention 2019, as set out in its recitals, is to create a "*uniform set of core rules on recognition and enforcement of foreign judgments in civil and commercial matters*" which seeks to promote effective access to justice for all and facilitate rule-based multilateral trade and investment through judicial cooperation.

The Hague Judgments Convention 2019 entered into force on 1 September 2023 and currently has six signatories: Ukraine, Israel, the United States, Russia, Costa Rica and Uruguay. The UK consultation closed on 9 February 2023 and a decision by the UK government is awaited by many.