

# UK (ENGLAND AND WALES)

Andrew Bartlett and Ashley Morgan,  
OSBORNE CLARKE LLP



## JUDGMENTS: LEGAL FRAMEWORK

### DOMESTIC FRAMEWORK

#### 1. WHAT IS THE APPLICABLE DOMESTIC LEGISLATIVE FRAMEWORK FOR ENFORCEMENT OF JUDGMENTS?

##### Domestic

The enforcement of domestic judgments can take the form of a number of different procedures, which are governed by various statutes, procedural rules and common law, including in particular Parts 70 to 73, 81, 83, 84, 85 and 89 of the Civil Procedure Rules 1998 (CPRs).

##### Foreign

There are six types of regime for the enforcement of foreign judgments, depending on where the judgment originates:

- **UK regime.** This regime relates to judgments originating from Scotland or Northern Ireland, which are distinct jurisdictions from England and Wales. A certificate from the court of origin must be registered in England, after which it will have the same effect as an English judgment. However, this regime is beyond the scope of this article.
- **European regime.** This relates to judgments from EU member states and certain European Free Trade Association (EFTA) countries. The EU regime is governed by three main instruments, depending on the court of origin:
  - Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation). This applies to all EU member states, except Denmark, where proceedings are commenced on or after 10 January 2015;
  - Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation). This applies to judgments from Denmark and all other EU member states where proceedings were commenced before 10 January 2015;
  - Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (New Lugano Convention). This applies to judgments from Norway, Iceland and Switzerland.

- **Statutory regime.** This relates to judgments from most commonwealth (and certain other) countries. The applicable countries and key provisions for this regime are set out in the.
  - Administration of Justice Act 1920;
  - Foreign Judgments (Reciprocal Enforcement) Act 1933.
- **Hague Convention regime.** This relates to judgments from the courts of states that are parties to the HCCH Convention on Choice of Court Agreements 2005 (Hague Choice of Court Convention). For these jurisdictions, the provisions of this Convention will apply. The enforcement of judgments to which the Hague Choice of Court Convention applies is broadly similar to the regime under the EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988 (Lugano Convention), and is governed by CPR 74.3 to 74.10. However, at present, the only non-EU states that have signed and ratified the Hague Convention are Mexico and Singapore. The Hague Convention regime is not therefore considered further in this article.
- **Specific bilateral treaties on enforcement.** If the judgment originates from a country not covered by one of the above regimes, the creditor should check to see whether a specific bilateral enforcement treaty applies. However, these specific treaties are not considered further in this chapter.
- **Common law regime.** This relates to judgments from all countries, including those to which none of the other regimes above apply.

## INTERNATIONAL CONVENTIONS/AGREEMENTS

### 2. WHAT INTERNATIONAL CONVENTIONS AND AGREEMENTS ON ENFORCEMENT OF JUDGMENTS IS YOUR JURISDICTION A PARTY TO?

#### European regulations

The Recast Brussels Regulation applies (replacing the Brussels Regulation).

However, the old Brussels Regulation still applies to judgments from Denmark and all other EU member states where proceedings were commenced before 10 January 2015. It also continues to apply in relation to Gibraltar and certain dependent territories of EU member states.

#### Conventions and bilateral treaties

The following international conventions and bilateral treaties are applicable:

- New Lugano Convention.
- Hague Choice of Court Convention
- The various statutory regimes for the recognition of judgments in place in the majority of Commonwealth territories, including:
  - the Bahamas;
  - Barbados;
  - Bermuda;
  - British Virgin Islands;
  - Cayman Islands;
  - Jamaica;
  - Malaysia;

- New Zealand;
- Nigeria;
- Singapore;
- Sri Lanka; and
- many small UK overseas territories.

The various other bilateral and multilateral conventions providing for the reciprocal recognition or enforcement of judgments with countries including:

- Canada;
- Australia; and
- Israel.

## DEFINITIONS

### 3. WHAT IS THE DEFINITION OF JUDGMENT IN YOUR JURISDICTION FOR THE PURPOSE OF ENFORCEMENT PROCEEDINGS?

#### Domestic

A judgment or order for the purposes of enforcement includes both money judgments and judgments granting non-monetary relief (including an injunction or a declaration) from a court. It also includes an award from another tribunal where the court has registered or given permission for it to be enforced as a judgment or order of the court (*Civil Procedure Rules (CPRs)*, 70.1(2)(c)).

A party that has the benefit of a judgment is a "judgment creditor" and a party against whom a judgment is made is a "judgment debtor".

#### Foreign

In the English CPRs, "judgment" is defined as "any judgment given by a foreign court or tribunal, whatever the judgment may be called", and includes (*CPR* 74.2(c)):

- A decree.
- An order.
- A decision.
- A writ of execution or a writ of control.
- The determination of costs by an officer of the court.

However, the class of judgments that are enforceable depends on the applicable regime.

**European regime.** The Recast Brussels Regulation, the Brussels Regulation and the New Lugano Convention all state that "judgment" means "any judgment given by a court or tribunal whatever a judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses".

As well as money judgments, non-money judgments such as injunctions, interim orders and decrees of specific performance made by a member state court, are also enforceable under the European regime.

**Statutory regime.** A narrower class of judgments are enforceable under the statutory regime than under the European regime. To be enforceable, the judgment must be made in civil proceedings and must be:

- Final and conclusive.
- For a sum of money, but not for taxes, a fine or other penalty.

Only the judgments of superior courts can be enforced under the Administration of Justice Act and only judgments of certain recognised courts under the Foreign Judgments (Reciprocal Enforcement) Act.

**Common law regime.** To be enforceable under the common law, a foreign judgment must be:

- Final and conclusive.
- For a sum of money, but not for taxes, a fine or other penalty.

Under the common law regime, the foreign court must be regarded by the law as a court of competent jurisdiction.

## ENFORCEABLE/EXCLUDED TYPES OF JUDGMENT

### 4. WHAT TYPES OF JUDGMENT IN COMMERCIAL MATTERS ARE ENFORCEABLE, AND WHAT TYPES ARE EXCLUDED?

#### Domestic

**Enforceable.** Domestic judgments are enforceable as follows:

- **Money judgments.** These are enforceable.
- **Judgments ordering or prohibiting the doing of acts or injunctions.** These are enforceable under the European regime but not under the statutory or common law regime.
- **Declaratory judgments.** These are enforceable under the European regime but not under the statutory or common law regime (although they are recognised under the common law regime).
- **Default judgments.** These are enforceable under the European regime but not under the statutory or common law regime (if there was no submission to the jurisdiction).
- **Judgments made without notice (ex parte) awards.** These are enforceable under the European regime (if the order/judgment has been served) but not under the statutory or common law regime.
- **Foreign decisions granting provisional measures.** These are enforceable under the European regime but not under the statutory or common law regime.
- **Some other types of judgments.** These are enforceable under the European regime (for example, certain insolvency proceedings) but other types of judgments are not enforceable under the statutory or common law regimes.

**Excluded.** See above, *Domestic: Enforceable*.

## Foreign

**Enforceable.** Foreign judgments are enforceable as follows:

- **Money judgments.** These are enforceable.
- **Judgments ordering or prohibiting the doing of acts or injunctions.** These are enforceable under the European regime but not under the statutory or common law regime.
- **Declaratory judgments.** These are enforceable under the European regime but not under the statutory or common law regime (although they are recognised under the common law regime).
- **Default judgments.** These are enforceable under the European regime but not under the statutory or common law regime (if there was no submission to the jurisdiction).
- **Judgments made without notice (ex parte) awards.** These are enforceable under the European regime (if the order/judgment has been served) but not under the statutory or common law regime.
- **Foreign decisions granting provisional measures.** These are enforceable under the European regime but not under the statutory or common law regime.
- **Some other types of judgments.** These are enforceable under the European regime (for example, certain insolvency proceedings) but other types of judgments are not enforceable under the statutory or common law regimes.

**Excluded.** See above, *Foreign: Enforceable*.

Under the European regime, judgments relating to the following are excluded from recognition and enforcement under the Recast Brussels Regulation:

- Judgments relating to revenue and customs.
- Administrative matters.
- Arbitration proceedings.
- Orders granting recognition to judgments of a non-member state.
- Orders or injunctions granted without notice to the respondent where the respondent has not been served with the order.

Judgments relating to the following matters are generally enforceable between EU member states but are subject to different enforcement regimes:

- Matrimonial matters.
- Wills and succession.
- Insolvency.

Under the statutory and common law regimes, only money judgments are covered.

## JUDGMENTS: PROCEDURE FOR ENFORCEMENT

### OVERVIEW

#### 5. WHAT IS THE GENERAL OUTLINE OF ENFORCEMENT PROCEEDINGS?

##### Domestic

**Appointing counsel.** Applicants are not formally required to appoint lawyers to commence enforcement proceedings in relation to a judgment. However, in reality, the appointment of English lawyers will be necessary in all but the simplest low value claims. If a court hearing is required, the applicant may need to appoint either a barrister or a solicitor with higher rights of audience to conduct the advocacy at the court hearing.

**Security for costs.** The judgment creditor does not have to provide security for costs as a matter of course. Any respondent to an application or defendant to a claim in the UK can apply for security of costs from an applicant or claimant. One of the grounds on which security of costs can be ordered is if the applicant or claimant is outside the jurisdiction and outside the states covered by the European regime (*Civil Procedure Rules (CPRs)*, 25.13(2)(a)). The court has discretion as to whether to award security for costs. However, the court is relatively unlikely to grant security where the defendant has failed to satisfy a foreign judgment.

**Jurisdiction and venue.** The enforcement of domestic judgments can take place in either the County Court or the High Court, although certain remedies (such as an attachment of earnings order) can only be made by the County Court. Generally, enforcement proceedings for high value judgments will proceed in the High Court in London.

**Adversarial or without notice (ex parte).** Applications for certain enforcement procedures, such as an order to take control of and sell goods within the jurisdiction, or for a third party debt order, can be made and heard without notice in the first instance, but this will be followed by a subsequent hearing, which must be on notice.

**Timing.** Applications for enforcement remedies can generally be dealt with quickly, with initial hearings and interim remedies capable of being granted in a matter of days. However, as with any litigation, enforcement proceedings can continue for some time (for example where cross-applications are made, orders are appealed or enforcement processes are frustrated).

**Fees.** Court fees vary according to the type of remedy sought (for example, the fee for an application for a writ of control over goods is GB£66, while for an application for a third party debt order or for a charging order, the fee is GB£100). However, fees are reviewed fairly regularly and the most up-to-date position should be checked.

**Appeals.** The court's permission is required to appeal an order to a higher court. However, this will only be granted in cases where the court considers that the appeal has a real prospect of success.

## Foreign

**Appointing counsel.** Applicants are not formally required to appoint lawyers to file an application to register a foreign judgment (or any of the other applications mentioned in this chapter) or commence new proceedings, but in reality the appointment of English lawyers is necessary as foreign lawyers are not entitled to conduct litigation in England. If a court hearing is required, the applicant may need to appoint either a barrister or a solicitor with higher rights of audience to conduct the advocacy at the court hearing.

**Security for costs.** See above, *Foreign: Security for costs*.

**Jurisdiction and venue.** A court has international jurisdiction to decide on matters of enforcement (including whether to grant a declaration of enforceability) where:

- The assets against which enforcement is sought are located in the jurisdiction.
- There is some other proper purpose to enforcement in England.

Generally, enforcement proceedings relating to high-value foreign judgments proceed in the High Court in London.

**Adversarial or without notice (ex parte).** The procedures for enforcing foreign judgments vary depending on the applicable regime. Applications to register foreign judgments (which are applicable under the European regime, unless the Recast Brussels Regulation applies, or under the statutory regime) can be made without notice. Certain applications for enforcement procedures can also be made without notice, but other applications, or stages of applications, must be made on notice (*see Question 18*).

**Timing.** If the Recast Brussels Regulation applies, the judgments of other member states are automatically enforceable, but enforcement can be challenged.

The timing of enforcement depends on the particular procedure followed: if there is a challenge, the enforcing court can stay enforcement proceedings or impose conditions on enforcement. Otherwise, where an application for registration for a judgment is required under the European or statutory regime, this can be made without notice and can be dealt with by a High Court "Master" rather than a judge. It is usually possible to have such an application decided within one or two weeks. However, actual enforcement cannot proceed until the time for challenging registration has expired, or any challenge has been determined. This can take several months (particularly where service must be effected outside the jurisdiction).

If the common law regime applies, the process takes longer. Proceedings must be filed and served on the judgment debtor, which can take some time if they are outside the jurisdiction. However, a claim based on a foreign judgment can usually be disposed of by an expedited "summary judgment" procedure, rather than going to full trial, since the court will not look to re-open the substance of the dispute.

**Fees.** The current court fee for an application to register a judgment is GB£66 (*see above, Domestic: Fees*). If the common law regime applies, and new proceedings need to be issued, the current court fee for issuing a claim will depend on the value of the claim (for claims above GB£10,000, the court fee will be 5% of the amount being claimed, up to a maximum of GB£10,000). However, fees are reviewed fairly regularly and the most up-to-date position should be checked.

**Appeals.** The process for appeal varies depending on the applicable regime:

- **European regime.** If the Recast Brussels Regulation applies, the foreign judgment is automatically enforceable (subject to certain formalities). There is no specific time limit for challenging enforcement. However, a judgment debtor must challenge the enforceability of the foreign judgment at the time that any steps are taken to enforce against its assets, otherwise enforcement will proceed.
- If the Recast Brussels Regulation does not apply, and the foreign judgment must be registered locally before it is enforceable, the judgment debtor has one month from service of the order of the enforcing court to appeal that registration (or two months if it is based outside the jurisdiction of the enforcing court).
- **Statutory regime.** If the statutory regime applies, the judgment debtor can apply to have registration of the judgment set aside within the period specified in the order of the court registering the judgment (this depends on factors such as where the judgment debtor is based and needs to be served with the order). The court's decision on registration can be appealed if the court grants permission to appeal.
- **Common law regime.** As fresh proceedings are required in order to obtain a freestanding UK judgment, a judgment under the common law regime will be subject to appeal in the same manner as a UK judgment. The court's permission is required to appeal that judgment to a higher court, and this will only be granted if the court considers that the appeal has a real prospect of success.

## FOREIGN JUDGMENTS: FORMAL/SIMPLIFIED PROCEEDINGS

### 6. IS THE ENFORCEMENT OF A FOREIGN JUDGMENT SUBJECT TO FORMAL PROCEEDINGS OR SIMPLIFIED PROCEDURES?

#### European regime

If the Recast Brussels Regulation applies, the judgment is automatically enforceable in the UK without the need for registration proceedings. However, a simple procedure should be followed and the judgment debtor can apply to challenge enforcement. If the Recast Brussels Regulation does not apply, a judgment creditor must first apply to court to register the foreign judgment (*see Questions 8 to 9*).

#### Statutory regime

Under the statutory regime, the foreign judgment must be registered in the UK, after which it can be enforced in the same way as a UK judgment. The simplified procedure involves an application for registration (*see Questions 8 to 9*).

#### Common law regime

Under the common law regime, the judgment creditor must commence fresh proceedings in the UK, using the procedure set out in *Questions 8 to 9*. Although the proceedings take the form of a debt claim, it is usual for the proceedings to be determined under the simplified "summary judgment" procedure.



## 7. MUST APPLICANTS INSTITUTE A NEW ACTION ON THE FOREIGN JUDGMENT IN THE FORM OF MAIN PROCEEDINGS INSTEAD OF MAKING AN APPLICATION FOR ENFORCEMENT BASED ON THE JUDGMENT?

Applicants are not required to institute a new action when the foreign court is based in a jurisdiction covered under either the European or statutory regimes. If the common law regime applies, the process for recognition of a foreign judgment involves commencing a claim for the debt created by the foreign judgment.

## FORM OF APPLICATION

## 8. WHAT DOCUMENTS AND INFORMATION MUST BE PROVIDED WITH AN APPLICATION FOR ENFORCEMENT?

### Domestic

Enforcement of a domestic judgment is made by an application to the court. The precise form of application (and information required within that form) varies depending on the precise remedy sought, but generally includes:

- Details or a copy of the judgment being enforced.
- Supporting information (verified by a statement of truth) setting out details such as the value of the judgment debt still outstanding and the reasons why the particular remedy is sought.

### Foreign

For foreign judgments, the documents and information to be provided varies depending on the applicable regime. In relation to below, where either the European or the statutory regime applies, the copy of the judgment must be authenticated.

**European regime.** Where the registration of a foreign judgment is required (such as when the Recast Brussels Regulation does not apply), the application to register the judgment must be accompanied by:

- An authenticated copy of the judgment.
- An English translation of the judgment.
- A certificate from the foreign court giving details of the judgment and stating that the judgment is enforceable in the state of origin (in the form set out at Annex I to the Recast Brussels Regulation).

**Statutory regime.** The application must be accompanied by:

- An authenticated copy of the judgment.
- An English translation of the judgment.
- A witness statement in support of the application, setting out certain prescribed information listed in the Civil Procedure Rules (CPRs) (CPR 74.4).

**Common law regime.** Fresh proceedings must be issued by filing a claim form and statement of case (particulars of claim). The foreign judgment forms part of the evidence in support of that action.

## 9. WHAT INFORMATION MUST BE INCLUDED IN THE APPLICATION REGARDING THE JUDGMENT, THE CLAIM AS AWARDED IN THE JUDGMENT, THE FACTS AND LEGAL GROUNDS OF THE CASE, AND THAT THE JUDGMENT IS NO LONGER APPEALABLE?

### Domestic

The specific information required in the application form varies depending on the precise remedy sought, but should generally include:

- Details of the judgment being enforced.
- The value of the judgment debt still outstanding.
- The reasons why the particular remedy is sought.

If there are any pending appeals of the judgment or associated order, this should be disclosed as part of the application.

### Foreign

**Claim as awarded.** For all of the foreign judgment regimes, the application for registration or enforcement must be supported by a copy of the judgment, translated into English.

**Facts and legal grounds.** Under the European regime, the principal information required must be provided in the certificate from the court of the state of origin of the judgment (in the form set out at Annex I to the Recast Brussels Regulation).

Under the statutory and common law regimes, the information that must be provided is the information necessary for satisfying the court that the requirements for enforcement are met (that is, primarily procedural information about the conduct of the proceedings leading to the judgment). Accordingly, the applicant does not need to provide a detailed explanation of the factual and legal basis for the underlying judgment.

If the application is made on an ex parte basis, "full and frank" disclosure of facts relevant to the application must be provided.

**Appeals.** In general, any appeals against the underlying judgment should be disclosed to the court when seeking registration or enforcement.

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## CHALLENGING ENFORCEMENT

### SERVICE

## 10. DOES THE ENFORCING COURT REVIEW SERVICE OF THE PROCEEDINGS? WHAT CONDITIONS REGARDING SERVICE OF THE PROCEEDINGS MUST BE SATISFIED?

### Domestic

The enforcing court will not automatically review service of proceedings, but a party with the benefit of a judgment must ensure that their opponent is served with the judgment (*Civil Procedure Rule 40.4*).

## Foreign

**European regime.** The court will not automatically review service of proceedings, but enforcement may be challenged if the judgment debtor was not served with the claim form in sufficient time to prepare his defence (*see Question 17*).

**Statutory regime.** It is a defence under the statutory regime that a debtor was not duly served with the process of the original court and did not appear, although the precise provisions of the Administration of Justice Act and the Foreign Judgments (Reciprocal Enforcement) Act must be referred to.

**Common law regime.** The court determines whether the foreign court's procedures breached rules of natural justice. Generally, this means that the defendant had due notice and an opportunity to be heard.

## FINAL/PROVISIONAL JUDGMENTS

### 11. MUST A JUDGMENT BE FINAL AND HAVE CONCLUSIVE EFFECT, AND WHAT IS THE EFFECT OF PENDING APPEAL PROCEEDINGS?

#### Domestic

Interim orders, such as orders for interim payments, are enforceable even though they are not final. If there is a pending appeal (for example of a final judgment) the court will generally make provision if execution of that judgment or order is to be stayed pending any appeal or other action. However, if no stay has been ordered, the judgment debtor can apply for a stay of execution, which will be at the discretion of the court.

#### Foreign

**European regime.** As well as final and conclusive judgments, the European regime covers the recognition and enforcement of non-money judgments (such as injunctions and interim orders) made by a member state court.

A pending appeal is not a ground on which enforcement can be refused if the judgment is already enforceable in the state in which it was granted. However, the court may stay the enforcement proceedings if either (*Article 51, Recast Brussels Regulation*):

- An appeal has been lodged in the foreign proceedings.
- The time for an appeal has not yet expired.

The Administration of Justice Act only covers final and conclusive judgments. Under section 9(2)(e) of this Act, if an appeal is pending or is intended to be lodged, the judgment cannot be registered.

However, the Foreign Judgments (Reciprocal Enforcement) Act specifically allows enforcement of interim payment orders. Under this Act, a foreign judgment is deemed to be final and conclusive although it may be subject to a pending or intended appeal in the foreign court (*section 1(3)*). However, the enforcing court can set aside or adjourn registration of the judgment pending the outcome of the appeal (*section 5(1)*).

**Common law regime.** Under the common law regime, the judgment must be final and conclusive and must be a judgment on the merits of the action. If the only way to contest the issues in the foreign jurisdiction is to appeal to a higher court, the judgment appealed from is regarded as final and conclusive, although enforcement proceedings may still be stayed at the discretion of the court pending that appeal. If, by contrast, the judgment can be reopened and reconsidered in the same court, this will not be considered to be final and conclusive. Interim orders are not enforceable.

## FOREIGN JUDGMENTS: JURISDICTION

12. IS THE ENFORCING COURT ENTITLED TO CONSIDER THE GROUNDS ON WHICH THE COURT ASSUMED JURISDICTION (AND IF SO, ON WHAT JURISDICTIONAL GROUNDS CAN ENFORCEMENT BE REFUSED)?

### European regime

The enforcing court can only consider the jurisdiction of the foreign court to the extent that the judgment is said to conflict with (*Recast Brussels Regulation*):

- The rules setting out how jurisdiction must be determined for insurance, consumer or employment matters (in relation to the Recast Brussels Regulation only) (*Article 45(1)(e)*).
- The rules giving exclusive jurisdiction to a particular member state where the proceedings involve, matters such as (*Article 45(1)(e)*):
  - immovable property;
  - the constitution of companies;
  - entries in public registers or the validity of certain IP rights.
- A contractual arbitration clause (*Article 1(2)(d)*).

For other grounds on which enforcement can be refused, see *Question 17*.

### Statutory regime

A foreign judgment is only enforceable under the statutory regime if the foreign court had international jurisdiction according to English private international law principles (see *Question 17*).

### Common law regime

The position is the same as for the statutory regime (see above, *Statutory regime*).

13. IF THE COURT ASSUMED JURISDICTION ON THE BASIS OF AN EXORBITANT GROUND OF JURISDICTION, CAN THE ENFORCING COURT REVIEW THE JUDGMENT ON THAT GROUND?

### Exorbitant ground of jurisdiction

**European regime.** An enforcing court will only consider jurisdiction on the basis of specific grounds (see *Question 17*).

**Statutory regime.** Under the statutory regime, the court will apply English private international law principles to determine whether the foreign court had jurisdiction (*see Question 17*). As part of this, the court will refuse to enforce a judgment if the foreign court assumed jurisdiction contrary to a contractual jurisdiction or arbitration agreement (*section 32, Civil Jurisdiction and Judgments Act*).

**Common law regime.** The position is the same as for the statutory regime (*see above, Statutory regime*).

### Voluntary acknowledgement

Generally, under each of the different enforcement regimes, if the judgment debtor voluntarily submitted to that jurisdiction (for example, by appearing in those proceedings other than to challenge jurisdiction), it will lose the right to challenge recognition or enforcement on the basis that the original court did not have jurisdiction. This will be the case even if the foreign proceedings were brought in breach of a jurisdiction or arbitration agreement (*Splithoff's Bevrachtungskantoor BV v Bank of China Ltd [2015] EWHC 999*).

## FOREIGN JUDGMENTS: REVIEW OF JUDGMENT

### 14. CAN THE ENFORCING COURT REVIEW THE JUDGMENT AS TO ITS SUBSTANCE IF ALL FORMALITIES HAVE BEEN COMPLIED WITH AND IF THE JUDGMENT MEETS ALL REQUIREMENTS?

Generally, a court will not review the substance of the foreign court judgment under any of the applicable enforcement regimes. However, it may be forced to consider issues relating to the way that the underlying decision was reached in the context of a challenge based on one of the permitted grounds set out in *Question 17*, such as fraud or public policy.

## FOREIGN JUDGMENTS: PUBLIC POLICY

### 15. CAN ENFORCEMENT OF A JUDGMENT BE REFUSED ON GROUNDS OF PUBLIC POLICY? DOES PUBLIC POLICY INCLUDE MATTERS OF SUBSTANTIVE LAW?

Enforcement of foreign judgments can be refused on grounds of public policy, under any of the applicable regimes. However, under the European regime, this will be construed particularly narrowly (*Rudolf's Meroni, Court of Justice of the European Union Case C-559/14*).

Public policy will be taken to include matters of substantive law and is not limited to procedural deficiencies.

### 16. IN WHAT CIRCUMSTANCES AND AGAINST WHICH TYPES OF JUDGMENTS HAS THE PRINCIPLE OF PUBLIC POLICY GENERALLY BEEN APPLIED?

The principle of public policy is generally construed restrictively by the courts. However, public policy grounds have been applied in relation to:

- The right to a fair trial.
- Judgments obtained by fraud.
- Breach of contractual dispute resolution provisions.

## DOMESTIC AND FOREIGN: OTHER CONDITIONS FOR RECOGNITION AND ENFORCEMENT

## 17. WHAT OTHER CONDITIONS EXIST TO ENFORCE AND RECOGNISE A JUDGMENT/ REFUSE RECOGNITION AND ENFORCEMENT?

**Domestic**

A judgment of a court is immediately enforceable unless either:

- It is stayed by order of the court.
- The court states that it is not enforceable for a period of time.

Unless it is stayed, it will remain enforceable even if it is subject to an appeal. If a judgment debtor makes an application to set aside the judgment, the High Court or Court of Appeal can stay the execution of the judgment (*section 49(3), Senior Courts Act 1981*).

Enforcement of a domestic judgment is not subject to a limitation period, but delay can be taken into account where the court has discretion over whether or not to grant measures in support of enforcement.

**Foreign**

For the European regime, the conditions for enforcement are as follows:

- **Court had jurisdiction.** Generally, the enforcing court cannot revisit the merits or the jurisdiction of the original court (however, see *Question 12*).
- **Defendant had proper notice of the proceedings.** Enforcement may be refused where the defendant did not have the opportunity to defend the proceedings (see *Question 10*).
- **No incompatibility with public policy.** Judgments must be compatible with public policy, although this requirement will be construed narrowly.
- **Reciprocity.** Not applicable.
- **No conflicting domestic or foreign judgment exists.** Judgments must not conflict with any existing domestic or foreign judgments between the parties.
- **Judgment/award is final as to its effects.** Not applicable.
- **Limitation period.** A judgment is enforceable in the UK if it would be enforceable in the originating court (see *Article 41(1), Recast Brussels Regulation*). The limitation period for enforcing a foreign judgment therefore reflects that of the foreign court.

Enforcement can also be refused where:

- The judgment debtor is the policyholder, consumer or employee respectively and the judgment conflicts with rules setting out how jurisdiction is to be determined for insurance, consumer or employment matters.
- The judgment is covered by certain agreements with third party states not to recognise certain judgments against their domiciliaries.

For the statutory regime, the conditions for enforcement are as follows:

- **Court/arbitral court had jurisdiction.** A foreign judgment is only enforceable under the statutory regime if the original court had international jurisdiction under English law principles (*section 9, Administration of Justice Act 1920 (1920 Act)*) (*section 4, Foreign Judgments (Reciprocal Enforcement) Act 1933 (1933 Act)*). It is insufficient that the original court had jurisdiction according to its own rules.

- **Defendant had proper notice of the proceedings.** It is a defence under the Administration of Justice Act or the Foreign Judgments (Reciprocal Enforcement) Act that the debtor was not duly served with the process of the original court and did not appear.
- **No incompatibility with public policy.** Judgments must be compatible with public policy.
- **No conflicting domestic or foreign judgment exists.** Judgments must not conflict with any existing domestic or foreign judgments.
- **Judgment/award is final.** The judgment must be final as to its effects.
- **Limitation period.** Under the Administration of Justice Act, an application for registration must be made within 12 months of the foreign judgment, although this can be extended. Under Foreign Judgments (Reciprocal Enforcement) Act, the limitation period is six years.
- **Other conditions.** The judgment must not:
  - have been obtained by fraud (there are subtle distinctions between precisely what this means under the Administration of Justice Act and the Foreign Judgments (Reciprocal Enforcement) Act);
  - have already been wholly satisfied;
  - be incapable of enforcement by execution in the country of origin; or
  - be a fine or penalty.

For the common law regime, the conditions for enforcement are as follows:

- **Court/arbitral court had jurisdiction.** A foreign judgment is only enforceable under common law if the original court had international jurisdiction under English private international law principles. It is insufficient that the original court had jurisdiction according to its own rules.
- **Defendant had proper notice of the proceedings.** A judgment is not enforceable if the foreign court's procedures breached the rules of natural justice. Generally (but not always) this requires due notice and an opportunity to be heard.
- **No incompatibility with public policy.** Judgments must be compatible with public policy and principles of natural justice.
- **No conflicting domestic or foreign judgment exists.** Judgments must not conflict with any existing domestic or foreign judgments between the parties.
- **Judgment/award is final.** The judgment must be final as to its effects.
- **Limitation period.** The limitation period is six years from the date of the foreign judgment (*section 24(1), Limitation Act 1980*). However, it is doubtful whether a judgment could be enforced if it would no longer be enforceable in the country of origin.
- **Other conditions.** The judgment must not:
  - have been obtained by fraud;
  - contravene the Human Rights Act 1998; or
  - be a fine or penalty.

## JUDGMENTS: METHODS OF ENFORCEMENT

## 18. WHAT IS THE ENFORCEMENT PROCEDURE AFTER A DECLARATION OF ENFORCEABILITY IS GRANTED?

**Domestic**

A judgment creditor has various options for enforcing a judgment, including the following:

- **Taking control of and selling goods located within the jurisdiction.** A judgment creditor can apply to take control of and sell goods belonging to the judgment debtor. The application can be without notice and does not require a hearing (*Civil Procedure Rules 83 to 85*).
- **Charging order.** An order granting a judgment creditor a beneficial interest over land, securities or certain other types of property. A separate order of sale is needed to allow the judgment creditor to sell the property.
- **Third party debt order.** The judgment creditor first applies for an interim order (without notice), preventing the third party from paying the sums due to the debtor. The second stage is a hearing to determine whether or not to grant a final order, compelling the third party to pay the amounts due to the judgment creditor. Whenever the debtor does not have the full legal entitlement to the debt or the court does not have jurisdiction to determine the legal obligations in respect of the debt, a third party debt order will not be possible. Generally, therefore, third party debt orders are not available in relation to future debts, jointly owned debts or foreign debts (see *Societe Eram Shipping Co Ltd v Compagnie Internationale de Navigation* [2003] UKHL 30 and *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Iraq* [2015] EWCA Civ 835).
- **Attachment of earnings order.** If the judgment creditor is an individual, they can apply for an order compelling their employer to deduct earnings and pay them to the judgment creditor (*section 1, Attachment of Earnings Act 1971*).
- **Receivership order.** Where enforcement against the debtor's assets would be difficult using the normal enforcement procedures, it may be possible to appoint a court appointed receiver to assist in gathering in the assets of the debtor. This can be a very powerful measure in cross-border situations where there are complex corporate structures, contractual relationships or trusts. In principle, the receiver is appointed and empowered to "stand in the shoes" of the debtor. The receiver can, for example, collect in future revenue streams, manage a business, enforce contractual rights or exercise powers under a trust (*Masri v Consolidated Contractors International Company SAL & Anor* [2008] EWCA Civ 303).

**Foreign**

After a judgment has been registered in the UK, the judgment creditor has the same options to enforce that judgment against assets within the jurisdiction as it would if the original judgment had been made in the UK (see above, *Domestic*).



## JUDGMENTS: INTERIM REMEDIES AND INTEREST

### INTERIM REMEDIES

#### 19. IS IT POSSIBLE TO APPLY FOR INTERIM MEASURES FROM THE ENFORCING COURT PENDING THE ENFORCEMENT PROCEEDINGS?

##### **Domestic**

The court can order interim relief or provisional measures in support of enforcement, such as freezing orders and/or orders requiring the disclosure of assets, after judgment is given (*Part 25, Civil Procedure Rules*).

##### **Foreign**

The courts can grant provisional measures in support of enforcement of foreign court judgments pending enforcement proceedings in the UK (*section 25, Civil Jurisdiction and Judgments Act 1982*).

To obtain provisional measures in the UK, there must be sufficient jurisdictional connection to the jurisdiction. Where there are clear assets located in the jurisdiction, or the defendant is resident in the jurisdiction, this should be clear. However, it is possible to obtain assistance from the court in situations where the link with the jurisdiction is not so clear. The granting of worldwide freezing orders or receivership orders can be pivotal in an international enforcement strategy.

### INTEREST

#### 20. IS THE JUDGMENT CREDITOR ENTITLED TO INTEREST? IF SO, ON WHAT BASIS IS IT CALCULATED?

##### **Domestic**

A High Court judgment or order accrues interest at the rate set by the Judgments Act 1838. Interest runs from the date of the judgment or order. The rate of interest on judgment debts since April 1993 has been 8% (simple, not compounded).

##### **Foreign**

**European regime.** The extent to which a judgment creditor is entitled to interest depends on whether interest is recoverable on the judgment under the law of the state of origin. If the original judgment carried an entitlement to interest under local law, that interest is recoverable. Once a judgment is registered, the foreign judgment takes effect for the purposes of the accrual of interest, as if it had been a judgment of the English court in which it has been registered (*see above, Domestic*).

**Statutory regime.** If the original judgment carried an entitlement to interest under local law, that interest is recoverable. Once a judgment is registered, the foreign judgment takes effect for the purposes of the accrual of interest, as if it had been a judgment of the English court in which it has been registered (*see above, Domestic*).

**Common law regime.** When judgment is entered by the English enforcing court, it will attract post-judgment interest (*see above, Domestic*).

## CURRENCY

### 21. MUST THE VALUE OF A FOREIGN JUDGMENT BE CONVERTED INTO THE LOCAL CURRENCY?

There is no requirement for judgments of the courts to be in local currency.

If a judgment is ordered to be entered in a foreign currency, the order should state that "it is ordered that the defendant pay the claimant foreign currency amount or the Sterling equivalent at the time of payment" (*Practice Direction 40B(10), Civil Procedure Rules*).

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## ARBITRAL AWARDS: LEGAL FRAMEWORK

### DOMESTIC FRAMEWORK

#### 22. WHAT IS THE APPLICABLE DOMESTIC LEGISLATIVE FRAMEWORK FOR ENFORCEMENT OF ARBITRAL AWARDS?

##### **Domestic**

The enforcement of domestic arbitral awards is governed by Part I of the Arbitration Act 1996.

##### **Foreign**

The enforcement of international arbitral awards is governed by Part III (sections 99 to 104) of the Arbitration Act.

The enforcement of awards made under an arbitration agreement in a state that is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) is provided for under sections 100 to 103 of the Arbitration Act. Alternatively, a New York Convention award can be enforced under section 66 of the Arbitration Act or under common law (*section 104, Arbitration Act*). However, in practice, the enforcement of an award under sections 100 to 103 of the Arbitration Act is a more straightforward route and is the usual route for enforcement where the New York Convention applies.

Where the New York Convention does not apply (for example, where the award is made in a country that is not a signatory), international awards can still be enforceable under one of the following regimes (however, these regimes are not considered in detail given the broad application of the New York Convention):

- The Geneva Convention on the Execution of Foreign Arbitral Awards 1927 (*see section 99, Arbitration Act*).
- The Arbitration Act, which provides for the recognition and enforcement of the International Centre for Settlement of Investment Disputes awards in relation to disputes between states and nationals of other states.
- The Foreign Judgments (Reciprocal Enforcement) Act 1933, which provides for the enforcement of awards made in certain former Commonwealth nations, where such awards have become enforceable in the foreign jurisdiction.
- Common law principles which, in principle, allow enforcement of awards made in any country.

## INTERNATIONAL CONVENTIONS/AGREEMENTS

### 23. WHAT INTERNATIONAL CONVENTIONS AND AGREEMENTS ON ENFORCEMENT OF ARBITRAL AWARDS IS YOUR JURISDICTION A PARTY TO?

The UK is a party to the following:

- New York Convention (subject to the reciprocity provision that the UK courts only recognise and enforce awards made in the territory of another contracting state).
- Geneva Convention on the Execution of Foreign Arbitral Awards 1927, which covers a small number of additional countries that are not also signatories of the New York Convention.
- International Centre for Settlement of Investment Disputes Convention 1966.

## DEFINITIONS

### 24. WHAT IS THE DEFINITION OF AN ARBITRAL AWARD IN YOUR JURISDICTION FOR THE PURPOSE OF ENFORCEMENT PROCEEDINGS?

An arbitral award is the tribunal's final and binding decision on the merits of the claim, as opposed to a decision on mere procedural matters. The award must give an unconditional decision and any remedy awarded must be certain and capable of performance.

For domestic arbitrations, the parties can agree to the form of the arbitral award (*section 52, Arbitration Act*). If there is no agreement, the award must:

- Be in writing.
- Be signed by all the arbitrators.
- Contain the reasons for the award unless the parties have agreed to dispense with reasons.
- State the seat of the arbitration.
- State the date the award is made.

## ENFORCEABLE/EXCLUDED TYPES OF ARBITRAL AWARD

### 25. WHAT TYPES OF ARBITRAL AWARDS ARE ENFORCEABLE, AND WHAT TYPES ARE EXCLUDED?

#### Domestic

**Enforceable.** The following types of domestic arbitral awards are enforceable:

- **Money awards.** Domestic money awards are enforceable (*section 48(4), Arbitration Act*).
- **Awards containing injunctions ordering or prohibiting the doing of acts.** Domestic awards containing injunctions ordering or prohibiting the doing of acts are enforceable (*section 48(5)(a), Arbitration Act*).
- **Provisional decisions or awards.** Where a tribunal has the power to make a provisional award, this can be enforced in the same way as an equivalent judgment or order of the court (*section 66, Arbitration Act*). However, in practice a court can adjourn an application for enforcement or stay the execution of enforcement pending final resolution of the dispute.
- **Declaratory awards.** Domestic declaratory awards are enforceable (*section 48(3), Arbitration Act*).
- **Other awards.** Other types of award may also be enforceable, for example:
  - an award for specific performance of a contract (other than a contract relating to land) is enforceable (*section 48(5)(b), Arbitration Act*);
  - an order for the rectification, setting aside or cancellation of a deed or other document (*section 48(5)(c), Arbitration Act*);
  - section 48 of the Arbitration Act gives a general power to the parties to agree on the remedies that the arbitral tribunal has the power to make.

**Excluded.** No class of domestic award is expressly excluded from recognition and enforcement.

#### Foreign

**Enforceable.** Categories of awards that can or cannot be made in a foreign-seated arbitration, or that will be recognised or enforceable in the UK, are not expressly provided for in either the Arbitration Act or the New York Convention.

The courts have recognised that the Arbitration Act and the New York Convention are intended to have a "pro-enforcement bias" (*Diag Human v Czech Republic [2014] EWHC 1639 (Comm)*). Therefore, the courts will look to enforce a foreign award and successful challenges to enforcement are rare.

**Excluded.** No class of foreign award is expressly excluded from recognition and enforcement. The UK Government has declined to make the declaration open to it under Article 1(3) of the New York Convention that the New York Convention would only apply to commercial matters.

## ENFORCEMENT PROCEEDINGS

### PROCEDURE

#### 26. WHAT IS THE PROCEDURE FOR MAKING AN APPLICATION TO ENFORCE AN ARBITRAL AWARD?

##### Domestic awards

Domestic awards are usually enforced by the court by summary procedure (*section 66, Arbitration Act*). The enforcing party must make an application (with or without notice) using an arbitration claim form, supported by:

- A witness statement (complying with rule 62.18(6) of the Civil Procedure Rules (CPRs)).
- The appropriate court fee.
- A draft of the order sought.

The applicant must also produce to the court an award and an arbitration agreement that is valid on its face. A certificate of interest must be produced for any post-award interest claimed (*CPR 62.19*).

For applications made without notice, where permission to enforce is granted, the order will not permit enforcement until the respondent has had 14 days from the date of service of the order to bring an application to set it aside. The 14-day time period is increased if the order is served outside of the jurisdiction (for which the court's permission is required). If the respondent does apply to set the order aside, the award cannot be enforced until that is resolved.

Once unconditional permission to enforce is granted, the applicant can proceed to enforce the award as if it were a court judgment (that is, by applying for a charging order, third party debt order or attachment of earnings order).

In limited circumstances, where the summary procedures under the Arbitration Act cannot be used, an action on the award must be commenced (for example, an action on the award is required where the arbitration agreement has been made orally or where there is a defect in the form or substance of the award, so that it does not comply with the requirements of the Arbitration Act). An action on the award is a new action to enforce the contract that is said to have arisen between the parties by virtue of an implied or express promise to pay the award.

**Ex parte or on notice.** The initial application for permission to enforce an award can be made either with notice or without notice in an arbitration claim form, although the court can nevertheless require that the application is served on the other party if it wishes to hear submissions from them (*CPR 62.18(1) and (2)*). If an order is made giving permission to enforce following an ex parte application, it must then be served on the creditor and cannot be enforced in the meantime.

**Applicable court.** An arbitration claim must normally be brought in one of the following courts:

- Commercial Court.
- Technology and Construction Court.
- Central London County Court.

(For further details of the correct court and division see *CPR Practice Direction 62*.)

**Limitation period.** Claims to enforce a domestic award must be brought within six years from the failure by one party to honour the award (*section 7, Limitation Act 1980; National Ability SA v Tinna Oils & Chemicals Ltd [2009] EWCA Civ 1330*), unless the arbitration agreement is under seal, in which case the limitation period is 12 years (*section 8, Limitation Act 1980*).

**Timing.** The time taken to obtain permission to enforce an award depends on whether documents need to be served outside of the jurisdiction and whether the other party seeks to challenge enforcement. In practice, service out of the jurisdiction can slow down the procedure quite significantly.

**Court fees.** The fee for an application for permission to enforce an arbitration award in the High Court is currently GB£66. In order to take steps to enforce an award against specific assets, once permission has been granted (for example, by applying for a charging order, an order seeking possession of goods or a third party debt order) further court fees are payable.

Court fees in the UK are reviewed from time to time and the current position should always be checked.

**Recourse.** A court's decision to grant or deny enforcement is subject to appeal in the same way as any other decision of a court in domestic proceedings. No automatic right to appeal exists and permission to appeal will only be granted by the court where it considered that the appeal has a real prospect of success. The requirement for permission to appeal reduces the potential for respondents to delay enforcement without good reason. A stay of execution can also be sought where permission to enforce has been granted.

## Foreign awards

The provisions for enforcement of a New York Convention award (*section 101(2) and 101(3), New York Convention*) mirror those under section 66 of the Arbitration Act. A New York Convention award can, by leave of the court, be enforced in the same way as a judgment or order of the court to the same effect. Where leave is given, judgment can be entered in terms of the award.

The procedure is largely the same as for domestic awards, although the party must produce both (*section 102(1), Arbitration Act*):

- The duly authenticated original award or a duly certified copy of it.
- The original arbitration agreement or a duly certified copy of it.

If the award or agreement is in a foreign language, the party must also produce a translation certified by an official or sworn translator, or by a diplomatic or consular agent.

**Ex parte or on notice.** The application can be made ex parte or on notice. In practice, most applications for permission to enforce are made ex parte, although the initial order from the court will not permit enforcement until the respondent has been served with the order and had the opportunity to challenge it.

**Applicable court.** An arbitration claim must normally be brought in the:

- Commercial Court.
- Technology and Construction Court.
- Central London County Court.

**Limitation period.** The limitation period is six years from when the award should have been paid (or where the arbitration agreement was made under seal: 12 years).

**Timing.** The time taken to obtain permission to enforce an award depends on whether documents need to be served outside of the jurisdiction and whether the other party seeks to challenge enforcement.

**Court fees.** These are the same as for the enforcement of domestic awards (*see above, Domestic awards*).

**Recourse.** There is no automatic right to appeal and permission to appeal will only be granted by the court where it considered that the appeal has a real prospect of success. The requirement for permission to appeal reduces the potential for respondents to delay enforcement without good reason.

## 27. CAN PARTIES SEEK TO ENFORCE ONLY PART OF THE AWARD?

For awards (either domestic or international) enforced under section 66 of the Arbitration Act, an application can be made for the entirety of the award or any part of the award that remains unpaid. Section 66 can be used where the only part of the award that remains unpaid relates to either:

- Interest on the award (*Continental Grain Co v Bremer Handelsgesellschaft GmbH* [1984] 2 Lloyd's Rep 121).
- The costs of the award (*Holdsworth v Wilson* [1863] 32 LJQB 89).

The parties can also seek to enforce part of an award to which the New York Convention applies. In *NNPC v IPCO (Nigeria) Ltd* [2008] EWCA Civ 1157, the court found that nothing in the New York Convention or the Arbitration Act was inconsistent with this power. It must be possible to ascertain the separate part that is to be enforced from the face of the award, so that judgment can be given in same terms as the award.

## FORM OF APPLICATION

## 28. WHAT DOCUMENTS AND INFORMATION MUST BE PROVIDED WITH AN APPLICATION TO ENFORCE AN AWARD?

### Domestic

An application to enforce an award under section 66 of the Arbitration Act must:

- Be made using a prescribed arbitration claim form (form N8A) supported by the original or a certified copy of the arbitration agreement and award. A certified translation into English must also be supplied as necessary.
- Include the names and addresses of the claimant and person against whom enforcement is sought.
- Include a statement that the award has not been complied with in whole or in part.
- Be accompanied by copies of the draft order sought.

## Foreign

An application to enforce an award under section 101 of the Arbitration Act carries the same information and documentation requirements as the enforcement of a domestic award under section 66 of the Arbitration Act, except that the party seeking enforcement must also provide (section 102(1), *Arbitration Act*):

- A duly authenticated original award or a duly certified copy of it.
- The original arbitration agreement or a duly certified copy of it.

In *Lombard-Knight (and another) v Rainstorm Pictures Inc* [2014] EWCA Civ 356, the court found that the term "certified" did not require independent certification or certification by an express reference to a comparison undertaken between the original document and the certified copy. It was sufficient to say that to the maker of the statement's knowledge and belief it was a true copy.

## 29. WHAT INFORMATION MUST BE INCLUDED IN THE APPLICATION?

### Claim form

For the enforcement of either domestic or foreign awards, the arbitration claim form must name the parties in the same way as they are named in the award. The form must be supported by a written witness statement or affidavit that:

- Exhibits the arbitration agreement (or a certified copy).
- Exhibits the award (or a certified copy).
- States the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award.
- States either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.
- Translations are required where the originals are in a foreign language.

Where an applicant seeks to enforce an award of interest where any part of that interest relates to a period after the date of the award, they must also file a certificate of interest containing all the information required by rule 62.19(1) of the Civil Procedure Rules 1998.

The arbitration claim form must state if the award is an agreed award, and any order made by the court must also contain such a statement.

### Award

The award itself must be exhibited (*see Question 28*).

### Claim as awarded

There is no formal requirement to include details of the original claim. However, in practice some limited information must be included in the witness statement about the nature of the dispute between the parties and the tribunal's findings.

## FACTS AND LEGAL GROUNDS

For details of the information required in support of the application, see *Question 28*.



There is a duty on the applicant to give "full and frank" disclosure of the facts that could be material to the application if the application is made without notice.

## Appeals

Any appeal against the award or challenge to its validity must be referred to in the application, particularly if the application is made without notice, as this can be relevant to whether or not enforcement proceedings should be stayed.

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## CHALLENGING ENFORCEMENT

### SERVICE

#### 30. DOES THE ENFORCING COURT REVIEW SERVICE OF THE PROCEEDINGS? WHAT CONDITIONS REGARDING SERVICE OF THE PROCEEDINGS MUST BE SATISFIED?

##### Domestic

For domestic arbitrations, the parties can agree on what forms of service are valid in the arbitration proceedings and there are set definitions of what is permissible in the absence of any agreement (which includes service by any "effective means", including by post to the addressee's last known principal residence or business address, or registered office) (*section 76, Arbitration Act*).

The enforcing court is not required to review service of the arbitral proceedings or the award. However, if the application to enforce is made without notice, the applicant has a duty of full and frank disclosure of facts that could be material to the application.

##### Foreign

One of the grounds for resisting enforcement of an award made under the New York Convention is that proper notice of the appointment of the arbitrator or of the proceedings was not given, or that a party was otherwise unable to present its case (*section 103(2)(c), Arbitration Act*). The question of whether "proper" notice was given will be considered in the context of the:

- Arbitration agreement.
- Applicable institutional rules.
- Arbitration law of the seat.
- Relevant facts.

Whether a party was "unable to present his case" in the arbitration proceedings will be considered in the context of the standard of due process in the seat of the arbitration (*Parsons & Whittemore Overseas Co v Société Générale de l'Industrie du Papier, Yearbook Comm Arb'n I [1976]*). The fact that procedural laws of the seat of arbitration were complied with is not sufficient by itself. The courts have held that the requirements of natural justice must be met (*Minmetals Germany GmbH v Ferco Steel Ltd [1999] CLC 647* and *Cukurova Holding AS v Sonera Holding BV [2014] UKPC 15*). In this case, Colman J stated that a party being "unable to present their case" envisaged a situation where this was outside of the party's control and not where the party had simply failed to take advantage of the opportunity to present its case.

## PENDING CHALLENGE PROCEEDINGS

## 31. WHAT IS THE EFFECT OF PENDING CHALLENGE PROCEEDINGS TO THE AWARD?

**Domestic**

For awards that are enforced under the New York Convention procedure, if challenge proceedings are still pending in the foreign state where the award was made, if it considers it proper the court can adjourn any decision on enforcement (*section 103(5), Arbitration Act*).

**Foreign**

Recognition or enforcement of an award subject to the New York Convention may be refused if a competent authority in the country in which the arbitration is seated or to whose law the arbitration is subject has suspended the award pending a challenge (*section 103(2), Arbitration Act*).

Where an application for the setting aside or suspension of an award has been made to such a competent authority, the enforcing court can adjourn the decision on the recognition or enforcement of the award (*section 103(5), Arbitration Act*).

## REVIEW/OPPOSITION

## 32. CAN THE ENFORCING COURT REVIEW AN AWARD IF ALL FORMALITIES WERE COMPLIED WITH AND IF THE AWARD MEETS ALL REQUIREMENTS?

**Domestic**

Arbitral awards can be enforced under section 66 of the Arbitration Act. England and Wales is a pro-enforcement jurisdiction, and subject to specific grounds for challenging an award, the courts will not wish to examine the merits of the dispute. However, the courts retain the discretion not to enforce an award, and certain discretionary grounds have been developed through common law (*see Question 33*).

**Foreign**

Article V of the New York Convention contains an exhaustive list of grounds under which the recognition and enforcement of Convention awards can be refused and this has been implemented by section 103 of the Arbitration Act 1996 (*see Question 33*). The New York Convention grounds cover the procedural and structural integrity of the award including, for example:

- That the award deals with matters outside the scope of the submission to arbitration.
- That the award relates to a matter that cannot be settled by arbitration.

None of the grounds require or allow the court to substantively investigate the merits of the dispute that is the subject of the award. In practice, the courts are careful not to be drawn into a review of the merits of the award in challenges to enforcement.

### 33. WHAT ARE THE GROUNDS FOR REFUSING ENFORCEMENT?

#### Domestic

There is only one mandatory ground under which the enforcement of a domestic award will be refused, which is a lack of substantive jurisdiction by the tribunal to make the award (*section 66(3), Arbitration Act*). Substantive jurisdiction is defined as (*section 82(1), Arbitration Act*):

- Where there is a valid arbitration agreement.
- Where the tribunal is properly constituted.
- Where matters have been submitted to arbitration in accordance with the arbitration agreement.

An award can also be challenged on the basis of:

- Serious irregularity (*section 68, Arbitration Act*).
- A point of law (*section 69, Arbitration Act*).

The right to challenge an award or object to enforcement under this section can be lost if the party delays making an objection (*sections 70(3) and 73, Arbitration Act*).

Furthermore, the courts have recognised further discretionary grounds on which leave to enforce an award can be refused. These grounds are not set out in the legislation but have developed in case law as part of the court's discretion in enforcing the award, under section 66 of the Arbitration Act. To date, these grounds broadly correspond to the defences to the enforcement in the New York Convention. They include:

- Real grounds for doubting the award is valid (*Middlemiss & Gould (A Firm) v Hartlepool Corporation [1972] 1 WLR 1643*).
- Estoppel (for example, where there is already a foreign judgment on the same facts as the award) (*Carl Zeiss Stiftung v Rayner and Keller Ltd (No 2) [1967] 1 AC 853*).
- Public policy considerations.

#### Foreign

International arbitral awards can be enforced under the New York Convention, Geneva Convention on the Execution of Foreign Arbitral Awards 1927, International Centre for Settlement of Investment Disputes Convention 1966, Foreign Judgments (Reciprocal Enforcement) Act 1933 or the common law. However, enforcement under the New York Convention is the only option that will be considered in this article.

The New York Convention provides limited grounds for the courts to refuse to enforce an award. These are replicated in sections 103(2) and 103(3) of the Arbitration Act. The courts can (but are not bound to) exercise their discretion to refuse to enforce an award for one of the following reasons:

- Incapacity of a party to the arbitration agreement under the law applicable to that party.
- Invalidity of the arbitration agreement under the law specified in the arbitration agreement or, if not specified, under the law of the country where the award was made.
- Proper notice not having been given to a party of the appointment of the arbitrator or of the arbitration proceedings, or the party having been otherwise unable to present his case.
- The award dealing with a difference not contemplated by or falling within the terms of the submission to arbitration, or containing decisions on matters beyond the scope of the submission to arbitration.

- The composition of the tribunal or the procedure not having been in accordance with the agreement of the parties or if there is no agreement, the law of the country where the arbitration took place.
- The award not yet being binding on the parties, or having been set aside or suspended by a competent authority.
- The award relating to a matter that is not capable of settlement by arbitration.
- It being contrary to public policy to recognise or enforce the award.

The party seeking to show that the court should refuse to enforce an award on the basis of one of these grounds bears the burden of proof. In practice, the courts are very supportive of arbitration and successful challenges to the enforcement are rare.

## PUBLIC POLICY

### 34. WHICH COUNTRY'S PUBLIC POLICY APPLIES? DOES THE COURT APPROACH THE ISSUE DIFFERENTLY DEPENDING ON WHETHER THE AWARD IS A DOMESTIC OR FOREIGN AWARD?

#### Domestic

Public policy is applied in relation to the enforcement of both domestic and international awards. The public policy to be considered is the public policy of the UK. However, the courts have recognised that public policy considerations are less likely to be a barrier to the enforcement of international arbitration awards because it may not be appropriate to impose public policy on contracts performed wholly elsewhere unless there are serious universal concerns (such as terrorism, drug trafficking or fraud).

#### Foreign

See above, *Domestic*.

### 35. IN WHAT CIRCUMSTANCES AND AGAINST WHICH AWARDS HAS THE PRINCIPLE OF PUBLIC POLICY GENERALLY BEEN APPLIED?

The courts have taken a restrictive approach to interpreting public policy in the context of enforcing arbitration awards. The Court of Appeal in *Deutsche Schachtbau- und Tiefbohr-Gesellschaft MBH v Ras Al Khaimah National Oil Co* [1990] 1 AC 295 stated that for an award to be contrary to public policy, there should be some element of illegality or a finding that enforcement is clearly injurious or wholly offensive to the public.

In *Minmetals Germany GmbH v Ferco Steel Ltd* [1999] CLC 647, the court refused to set aside leave to enforce a China International Economic and Trade Arbitration Commission award on public policy grounds relating to alleged procedural irregularities. The following factors were considered relevant:

- The nature of the procedural injustice.
- Whether the respondent has invoked the supervisory jurisdiction of the seat of the arbitration.
- Whether a remedy was available under that jurisdiction.
- Whether the courts of that jurisdiction have conclusively determined the enforcer's complaint in favour of upholding the award.

- If the enforcee failed to invoke that remedial jurisdiction, why they did not do so and, in particular, whether they were acting unreasonably in failing to do so.

An arbitration award made in the UK was held unenforceable as a matter of public policy where the underlying contract between the parties (not the arbitration agreement) involved smuggling goods out of Iran and was therefore illegal (*Soleimany v Soleimany* [1999] QB 785). The Court of Appeal held that it would not enforce an award where the underlying contract was illegal under the law, or if it was illegal under the law of a foreign and friendly state that governed the contract or in which performance was required.

In *Westacre Investments Inc v Jugoimport-SDRP Holding Company Ltd & Ors* [1999] EWCA Civ 1401, the court noted that where contracts were not to be performed in the UK, it would be necessary to balance the need to discourage illegal contracts with the need to enforce arbitration awards as far as possible. The judge held that it may not be appropriate to impose UK public policy on contracts performed wholly elsewhere, unless "universally condemned activities" were involved (such as terrorism, drug trafficking, prostitution or fraud). The majority also considered it inappropriate to look behind the finding of the tribunal as to illegality. This approach was followed in *R v V* [2008] EWHC 1531 (Comm).

In *Omnium de Traitement et de Valorisation SA v Hilmarton Ltd* [1999] 2 ALL ER (Comm 146), a contract governed by Swiss law required performance in Algeria, where performance was illegal due to laws governing intermediaries and public contracts. The court found that enforcement was not contrary to UK public policy because the question of enforcing an arbitration award under UK law is different to enforcing the actual contract or awarding damages for its breach. The award was not contrary to the public policy of the governing law or seat of the arbitration and therefore was found to not be contrary to UK public policy.

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## ACTUAL ENFORCEMENT

### 36. WHAT IS THE EXECUTION PROCEDURE WHEN A DECLARATION OF ENFORCEABILITY IS GRANTED?

An order granting permission to enforce an award serves as the basis of further enforcement measures by the courts following the expiry of the relevant time period for it being challenged. The party seeking enforcement can then apply for enforcement measures in the same way as a party with a domestic court judgment in its favour can do so (see *Questions 1 and 5*).

### 37. CAN DEFENDANTS OPPOSE THE EXECUTION PROCEDURE, AND IF SO, ON WHAT GROUNDS/DEFENCES?

#### **Domestic**

Defendants can oppose the execution procedure. Applications for enforcement against specified assets can be challenged on the grounds that the relevant requirements for the enforcement method in question have not been satisfied. In practice, disputes often arise over issues such as:

- The true beneficial owner of the asset.
- Third parties holding security interests in the assets.
- Debts not being due or not being capable of being subject to attachment or third party debt orders.
- Conflict of laws issues.

Applications for interim measures to preserve assets are more straightforward once a final order granting permission to enforce the award is obtained. However, applications can still be challenged.

### Foreign

The grounds for opposing particular enforcement procedures are the same as for domestic awards (*see above, Domestic*).

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## ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST

### INTERIM REMEDIES

#### 38. IS IT POSSIBLE TO APPLY FOR INTERIM MEASURES FROM THE ENFORCING COURT PENDING THE ENFORCEMENT PROCEEDINGS?

##### Domestic

The enforcing court can order interim measures (such as freezing orders) either pre-award, or post-award, to aid enforcement (*U&M Mining Zambia Ltd v Konkola Copper Mines Plc [2014] EWHC 3250 (Comm)*).

##### Foreign

The enforcing court can award interim remedies for a foreign award that has been recognised in domestic courts in the same way as for a domestic award. The court can award a freezing order in relation to property that is located out of the jurisdiction, although this will be a matter of discretion and there will need to be a sufficient connection with the jurisdiction.

### INTEREST

#### 39. IS THE CREDITOR ENTITLED TO INTEREST? IF SO, ON WHAT BASIS IS IT CALCULATED?

##### Domestic

The parties are free to agree that a tribunal has the power to award interest. Unless otherwise agreed, the tribunal can award interest on either a simple or compound basis, and to decide the rate of interest (*section 49, Arbitration Act*).

Where an arbitral award is being enforced with leave of the court (under *section 66(1) Arbitration Act*), unless provided for in the award, the creditor is not entitled to interest on the award. However, where leave has been given by the court to enforce the award, the creditor is entitled to then seek judgment in terms of the award (*section 66(2), Arbitration Act*). Where the court has entered judgment in terms of the award, the court is entitled to award post-judgment interest, at the rate of 8% as specified by the Judgments Act 1838 (*Sonatrach v Statoil Natural Gas LLC [2014] EWHC 875 (Comm)*).

## Foreign

The creditor is entitled to interest if this is provided for in the arbitration agreement between the parties and the arbitral award.

As with enforcement of a domestic award, where a New York Convention award is being enforced with leave of the court (under section 101(2) Arbitration Act), there is no entitlement for the creditor to receive interest on the award, unless provided for in the award. However, where the court has entered judgment in terms of the award (under section 101(3) Arbitration Act), the court is entitled to award post-judgment interest. The rate of interest will be fixed at 8% for awards made in Sterling (*Judgments Act 1838*), or for awards in other currencies, will be at such rate as the court sees fit (*section 44A, Administration of Justice Act 1970*).

## CURRENCY

### 40. IS IT REQUIRED TO CONVERT THE VALUE OF FOREIGN AWARDS INTO THE LOCAL CURRENCY?

There is no requirement for awards or judgments of the court to be in local currency. Where a judgment is ordered to be entered in a foreign currency, the order must state that "it is ordered that the defendant pay the claimant foreign currency amount or the Sterling equivalent at the time of payment" (*Practice Direction 40B(10), Civil Procedure Rules*).

## JUDGMENTS AND ARBITRAL AWARDS: PROPOSALS FOR REFORM

### 41. ARE ANY CHANGES TO THE LAW CURRENTLY UNDER CONSIDERATION OR BEING PROPOSED?

#### Judgments

The European regime discussed above in relation to the enforcement of court judgments of other EU member states is governed by EU law and subject to the jurisdiction of the Court of Justice of the EU. However, with the UK currently negotiating its exit from the EU, an issue that will need to be resolved is what will replace this legislative framework, for the recognition and enforcement of foreign judgments in the UK as well as the recognition and enforcement in the EU of judgments by courts in the UK.

On 20 March 2017, the House of Lords European Union Select Committee issued a report, which considered the potential difficulties if the UK were to leave the EU without alternative arrangements in place, and went on to consider some of the potential alternatives (*see [www.publications.parliament.uk/pa/ld201617/ldselect/lddeucom/134/134.pdf](http://www.publications.parliament.uk/pa/ld201617/ldselect/lddeucom/134/134.pdf)*).

#### Arbitral awards

No changes to the Arbitration Act or procedures for the enforcement of awards are currently under consideration.

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## ONLINE RESOURCES

### LEGISLATION.GOV.UK

**W** [www.legislation.gov.uk](http://www.legislation.gov.uk)

**Description.** Official online source of original and revised UK legislation, managed by The National Archives on behalf of the government.

### CIVIL PROCEDURE RULES

**W** [www.justice.gov.uk/courts/procedure-rules/civil/rules](http://www.justice.gov.uk/courts/procedure-rules/civil/rules)

**Description.** Official online source of the Civil Procedure Rules 1998 and associated practice directions, which set out the procedural code governing civil proceedings in the UK.

### UNCITRAL: NEW YORK CONVENTION

**W** [www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html)

**Description.** Official website of the United Nations Commission on International Trade Law relating to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), containing a link to the New York Convention, a guide on the New York Convention and related case law from several jurisdictions.