

HOW TO ENFORCE A FOREIGN JUDGMENT IN ENGLAND

When asked whether and, if so, how a foreign judgment can be enforced in England, an English lawyer's answer will be: "it depends". It depends upon when the judgment was given, what jurisdiction provisions the parties have agreed, what courts gave the judgment, and on a myriad of other factors. That is not to say that it will be impossible, or even hard – it just depends.

The enforcement of a judgment in a civil and commercial case outside the state in which it was given is not common, though it does, of course, happen. How it happens in England is not, however, always straightforward. Depending upon how you count, there are at least five possible ways to enforce a foreign judgment in the English courts. Each method has slightly different rules and procedures, with different complications, so it is important to choose the right method or, if two or more are available, the one that looks the most straightforward. We discuss the various means below.

Hague Convention

The Hague Convention on choice of court agreements of 2005 applies to agreements that give exclusive jurisdiction to the courts of a participating state (an asymmetric jurisdiction agreement is probably not exclusive for these purposes). A judgment of any sort (though not for interim measures) given by courts chosen in this way is then enforceable in all other participating states. The grounds for refusing to enforce a judgment are limited (eg public policy, incompatibility with an earlier English judgment or the judgment was obtained by fraud), and the procedures relatively straightforward (the "court addressed shall act expeditiously" and "there shall be no review of the merits of the judgment given by the court of origin"). The Convention was given effect in English law by the Private International Law (Implementation of Agreements) Act 2020.

The parties to the Hague Convention include the EU, the UK and Singapore. A judgment given in one of those states is therefore enforceable in England under the Convention. The Convention only applies to exclusive choice of court agreements concluded after the Convention's entry into force for the state of the chosen court. The Convention came into force for EU member states on 1 October 2015 (1 September 2018 in the case of Denmark). So, for example, a judgment given in the French courts, seised on the basis of a choice of court agreement entered into on 1 January 2019, will be covered by

Key issues

- There are various different means to enforce a foreign judgment in England
- Which means is appropriate depends upon the source and nature of the judgment
- Enforcement can be easy and straightforward
- But complexities can render it lengthy, perhaps impossible

the Convention and will therefore be enforceable in England under the Convention.

Administration of Justice Act 1920

The Administration of Justice Act 1920 provides for the registration and enforcement of money judgments given in certain foreign states, generally states that were formerly within the British Empire. These include the Cayman Islands, Cyprus, New Zealand, Nigeria, Malta and Zimbabwe. Registration is discretionary, though will generally be ordered absent good reason.

An application for registration should be made within 12 months of the foreign judgment, though the court can extend this period. Registration must be refused on certain grounds (such as the judgment having been obtained by fraud or being contrary to public policy) and cannot be made if an appeal is pending. There is also a jurisdictional requirement. Registration must be refused if the judgment debtor was not carrying on business in the relevant state, was not ordinarily resident there or had not submitted voluntarily to the jurisdiction of the courts of the state.

The jurisdictional requirement means that a person faced with court proceedings in a country in which they otherwise have no presence and to which they have not agreed must decide whether to take part in the proceedings. If they take part in the proceedings on the merits (as opposed merely to objecting to the court's jurisdiction), they will be treated as having submitted to the jurisdiction of the court and will lose the ability to challenge enforcement in England on the jurisdictional ground; if they do not take part, judgment will, presumably, be entered against them by default, but they may then be able to challenge an attempt to enforce the judgment in England. This can be a difficult choice, not least because the UK may not be the only country in which the judgment creditor may be able to enforce the foreign judgment.

Foreign Judgments (Reciprocal Enforcement) Act 1933

This 1933 Act applies to final and conclusive money judgments (whether or not subject to an appeal). The regime rests upon mutual enforcement treaties between the UK and other states, and is in substance similar to that under the 1920 Act, including as to the jurisdictional requirement, save that registration of the foreign judgment is not subject to an overriding discretion. The 1933 Act applies, for example, to Australia, Canada, Israel, Norway and Pakistan. Statutory instruments, made under the Act, set out the detailed provisions for each state.

Foreign Judgments (Reciprocal Enforcement) Act 1933: special cases

In addition to the states mentioned in the last paragraph, the 1933 Act also applies to six members of the EU as a result of treaties between the UK and those members dating from the 1930s to the 1960s. These are Austria, Belgium, France, Germany, Italy and the Netherlands. The treaties and the 1933 Act's application to them remained in existence throughout the UK's membership of the EU, but the treaties were expressly "superseded" first by the Brussels Convention and then by the subsequent EU regulations covering jurisdiction and the enforcement of judgments to the extent that the treaties and the EU rules covered the same area.

“Registration must be refused if the judgment debtor was not carrying on business in the relevant state, was not ordinarily resident there or had not submitted voluntarily to the jurisdiction of the courts of the state.”

This raises the question of whether the superseding of these treaties was permanent for the area subsumed by the EU's regime or whether the treaties revived in full on the UK's withdrawal from the EU. This is ultimately a question of EU law since it turns on the meaning and effect of EU treaties and legislation (though without recourse to the EU's Court of Justice from the English courts). The answer is not clear.

Section 6 of the 1933 Act provides that if registration of the judgment under the Act is possible, it is the only means available in England to recover the judgment debt. Unlike enforcement under the 1920 Act, it is not possible to sidestep the 1933 Act by bringing a common law action on the judgment (see below). A court will therefore have to grapple with the question of whether or not the superseding of the treaties was permanent, which could cause delays in enforcement, at least for the first judgment creditor to face the issue.

The Lugano Convention also expressly "superseded" the treaty on the mutual enforcement of judgments between the UK and Norway of 12 June 1961. However, the UK and Norway have expressly agreed that this treaty should apply to judgments given after 31 December 2020 (Lugano continues to apply to judgments given before), avoiding the uncertainty attaching to the treaties with the six EU member states.

Common law

The common law method of enforcing a foreign money judgment is available where there is no other means available (and, except under the 1933 Act, even if there is another means). The common law method is the only method available for judgments from, for example, the courts of the US, Spain, Russia and China.

The common law does not provide for the enforcement of a foreign judgment as such. Instead, the English court will, as long as certain conditions are met, treat a foreign judgment as creating a debt due from the judgment debtor to the judgment creditor, and will then give an English judgment on that debt. If there are no real issues as to whether the conditions are met, it is usually possible to obtain a summary English judgment, which seldom takes materially longer than registering the foreign debt under the 1920 or 1933 Act.

The conditions that must be met for a foreign judgment to be treated as creating a debt are broadly similar to those applicable to registration under the 1920 and 1933 Acts, in particular as to the jurisdiction of the court giving judgment.

EU legacy judgments

When the UK was a member of the EU, judgments given in civil and commercial matters by courts in one member state were enforceable in the English courts under the Brussels I Regulation (recast). The Regulation provided very limited grounds to object to enforcement (eg public policy or incompatibility with an earlier English judgment), and the procedure was intended to be near automatic. Similar provisions applied to judgments given by the Swiss, Norwegian or Icelandic courts by virtue of the 2007 Lugano Convention between the EU and those countries (though the procedures for enforcement could be somewhat more extended).

With the UK's withdrawal from the EU, the Brussels I Regulation and the Lugano Convention have ceased to apply in England. However, by virtue of the Withdrawal Agreement between the UK and the EU, the Brussels

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Regulation continues to apply to the enforcement of judgments given in proceedings started in EU member states before the end of 2020. EU and related rules will therefore continue to apply in the English courts for a number of years yet, though with decreasing practical relevance over time.

The UK has also applied the same approach to judgments in the three (non-EU) Lugano contracting states, namely Iceland, Norway and Switzerland.

(The agreement between the UK and Norway referred to above was intended as a short-term measure until the UK re-joined the Lugano Convention in its own right. The three non-EU participants have consented to the UK's doing so, but joinder requires the agreement of all existing parties and the other two parties, the EU and Denmark, have yet to give their consent. The European Commission has recommended that the EU does not give its consent.)

General restrictions

General restrictions apply to the enforcement of money judgments under the 1920 and 1933 Acts and at common law, including that the judgment must not have been obtained by fraud, that the proceedings leading to it must not have been contrary to natural justice and that the judgment must not be in respect of taxes or other exercises of sovereign authority (possibly including securities laws). Also, a judgment for multiple damages cannot be enforced – indeed, even the compensatory part of an award of multiple damages cannot be enforced (section 5 of the Protection of Trading Interests Act 1980, which also provides for the recovery of sums paid on a foreign judgment for multiple damages).

Enforcement

Once a foreign judgment is registered or an English judgment obtained on that judgment, it can be enforced in the same way that an entirely domestic judgment would be enforced. Indeed, even before that is possible, interim measures (such a freezing injunction) can be obtained in support of the attempted enforcement. (Interim measures can even be obtained, under section 25 of the Civil Jurisdiction and Judgments Act 1982, in support of the foreign proceedings whilst they are still ongoing.)

The English courts will also recognise a foreign judgment in certain circumstances. For example, if a foreign court has decided a particular issue between the parties (eg that there was no contract or there has been no breach of contract), it will not generally be possible to re-litigate that decision in the English courts.

Conclusion

Enforcement of foreign judgments is not a common occurrence in the English courts, though it does, of course, happen. The procedures can be pernickety, but in many cases it is likely to be possible to secure enforcement of money judgments. It depends.

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