

To: Our Clients and Friends

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Enforcement of US Court Judgments in England

1) US (and Foreign) Court Judgments in England

Given London's status as a financial centre, England is a sensible venue to explore when considering where to enforce a court decision.

England has two statutory procedures to enforce judgments from foreign courts:

- I. the Administration of Justice Act 1920 (dealing with certain British colonies and Commonwealth countries); and
- II. the Foreign Judgments (Reciprocal Enforcement) Act 1933 (dealing mostly with Commonwealth countries).

Various provisions of EU law also provide for the reciprocal enforcement of decisions of the courts of other EU/EEA member states.

The above legislative arrangements do not cover most of the world's countries. Important trading partners of the UK, such as Japan and the USA, are not included.

However, it is possible to bring an action in England at common law to enforce the judgment of any foreign court.

Enforcement at Common Law

In the absence of a legislative provision, the procedure for enforcing the judgment of a foreign court is to bring a separate claim in the English courts. The English courts will treat the foreign judgment as creating a debt between the parties rather than requiring the matter to be re-litigated on the merits.

If the defendant is domiciled outside England & Wales it will be necessary to apply to the court for permission to serve the claim form upon the defendant out of the jurisdiction. The fact that a claim is brought to enforce a foreign judgment is a basis upon which the court may serve the claim form out of the jurisdiction. Although such permission is always subject to the discretion of the Court, it will likely be granted if the debtor has assets in this jurisdiction.

If the conditions for enforcement (set out below) are met, the usual procedure is to apply for summary judgment on the claim, which in most cases is a straightforward and relatively cheap procedure.

Requirements imposed on the judgment

The English court will generally not “*look behind the judgment*” of the foreign court. The decision cannot be set aside on its merits, either of fact or of law, even if the English court can be satisfied that the decision of the foreign court is wrong as a matter of law. For a foreign judgment to be recognized, all that is required is that:

- The judgment is final and conclusive on the merits;
- The claim is for a specific, definite amount of money including a final order for costs, rather than specific performance; and
- The foreign court had jurisdiction according to English rules.

Finality of the judgment

The judgment must be final and conclusive in the court which pronounced it. This means that the order must be a final order, not an interim order, and that the decision would preclude further proceedings from being brought on the same subject-matter in that jurisdiction.

This does not mean that the appeals process must be exhausted, provided the appeal is to a higher court, and there has been no stay of the lower court’s order until the appeal has been determined.

Desert Sun Loan Corp v Hill [1996] 2 All E.R. 847

Here a claimant sued in England to enforce a judgment of an Arizona court. The defendant had failed in an application to the Arizona court to set aside the judgment on the grounds that he had not authorized a US lawyer to enter an appearance in Arizona. The claimant sued to enforce the judgment in England, and applied for summary judgment on the grounds of issue estoppel and that the debtor had no arguable defence. The claimant appealed.

The Court of Appeal held that whilst the Arizona court had decided it had jurisdiction, it was not clear whether the substantive issue of whether the US lawyer was authorized to act had been determined by the Arizona court. Summary judgment was not obtained and the defendant was allowed to defend the claim.

Joint Stock Company (Aeroflot-Russian Airlines) v Berezovsky and another [2014] EWCA Civ 20

In this case Aeroflot’s claim in England to enforce a Russian judgment was summarily dismissed. It was held that the Russian judgment could not be seen as final. The Court of Appeal clarified the approach to be adopted when considering whether a foreign judgment is final and binding for the purposes of recognising and enforcing a foreign judgment; the test was whether the earlier judgment would have precluded the unsuccessful party from bringing fresh proceedings in the original jurisdiction.

Specific monetary nature of the claim

The claim must be for a definite sum of money. A sum is regarded as sufficiently certain for these purposes if it can be ascertained by a simple arithmetical process.

Jurisdiction

English courts will normally recognize a foreign court's jurisdiction to pronounce a judgment capable of recognition and enforcement in England if either:

- At the time the proceedings were commenced, the defendant was present in the country of the foreign court; or
- If the defendant submitted to the jurisdiction of the foreign court, either by agreement or by taking part in the proceedings.

A company will be regarded as present in a foreign jurisdiction if:

- it has established and managed at its own expense a fixed place of business in the foreign country and, for more than a minimal period of time, carried on business at those premises; or
- a representative of that corporation has been carrying on business in that country for more than a minimal period of time.

In either case, presence can only be established if it can be proved that the corporation's business interests have been transacted from, or at, the fixed place of business.

It is not permissible to argue that a company is present in a foreign jurisdiction because it is a part of a larger group of companies which has another group company within the foreign jurisdiction.

A defendant will be deemed to have submitted to the jurisdiction of the foreign court in the following circumstances:

- the defendant actually selected the foreign court, by commencing the proceedings as claimant in the foreign action;
- the defendant participated in the proceedings in the foreign action (unless this appearance was purely for the purpose of contesting the foreign court's jurisdiction or to protect or obtain the release of property seized or threatened with seizure); or
- if the parties have agreed that any disputes between them be referred to the courts of the foreign country, or for proceedings to be served on them in that country, the English courts will deem them to have agreed to the jurisdiction of the foreign court. A jurisdiction clause in a commercial agreement would achieve this result. However, such an agreement must be explicit and agreement will not be implied.

The purpose of any appearance, not the form it took, is conclusive. If a defendant had to submit a case on the merits as well as applying to contest jurisdiction, the defendant will be entitled to argue that he did not submit to the foreign court. However, if the defendant defends the claim on the merits when this was not necessary to contest jurisdiction, the English court is likely to conclude that by defending the claim on the merits the defendant submitted to the jurisdiction of the foreign court.

Circumstances which may prevent enforcement

Generally, if the English court considers the judgment to be conclusive and that the foreign court had jurisdiction, it will be difficult to avoid enforcement of the foreign judgment. Enforcement can be avoided only in a limited number of circumstances, as set out below.

Fraud

A foreign judgment which has been obtained by fraud will not be recognized or enforced in England, whether the court itself committed the fraud, or whether a party to the litigation committed the fraud.

Gelley v Shephard [2013] EWCA Civ 1172

Following a court order issued by a BVI court, it was held that the order had been “tainted by fraud” because of misstatements made by Mrs Gelley. The Court of Appeal considered circumstances where the court would refuse to enforce a foreign judgment ‘tainted by fraud’. In considering the approach of the courts as to the scope of the fraud exception, Sales J provided a more precise formulation stating that in order for the exception to apply, that the fraud in question must have been “*operative in obtaining the foreign judgment and order*”. It follows therefore that the exception applies where the judgment and order in question would not (or there was a real possibility it would not) have been made, but for the fraud.

Public policy

A foreign judgment will not be enforced if its enforcement would be contrary to public policy in England. It has been held that if this policy issue was considered by the foreign court (or if the public policy of the foreign country is substantially the same as under English law), the conclusion of the foreign court might prevent this issue being raised before the English courts.

“Public policy” is difficult to define - previously a Commercial Court judge said that “*it is never wise to attempt an exhaustive definition of its content*”. However, it does not refer to the policy of an individual government, or relate to the protection of national commercial or strategic interests. It refers instead to concepts of morality and seeks to prevent interference in litigation or bribery and influence-peddling, as well as refusing to enforce contracts to perform an illegal activity.

Natural justice

A foreign judgment will not be enforced by the English courts if the proceedings in which that judgment was obtained were contrary to natural justice. This objection may be taken before the English court even if it was not taken before the foreign court.

Rubin v Eurofinance SA [2012] UKSC 46

This case concerned a US federal bankruptcy court judgment in default of appearance. The UK Supreme Court decided that a foreign judgment should not be enforced unless the defendant was present in the foreign jurisdiction or otherwise voluntarily submitted to the proceedings in its courts.

Foreign public/criminal law

The English courts will not enforce a judgment originating from a claim for tax, a fine or revenue of a foreign country.

United States Securities & Exchange Commission v Manterfield [2009] EWCA Civ 27

The grant of a freezing injunction to the Securities and Exchange Commission in support of United States proceedings did not in the circumstances fall foul of the rule preventing enforcement in England of foreign penal laws. It was right not to require the Commission to give a cross-undertaking in damages.

JSC VTB Bank v Skurikhin and others [2014] EWHC 271 (Comm)

This case illustrates continued uncertainty regarding conclusiveness of foreign judgments for “fines and penalties”. Simon J held that there was an arguable defence to the claims characterised as “penalties” on public policy grounds. Therefore, summary judgment in respect of the principal sums and contractual interest was granted, but sums of interest in respect of the “penalties” were not recoverable.

Conclusion

The above exceptions are generally regarded as difficult to establish. Despite the lack of arrangements for reciprocal enforcement of judgments, it should be possible to enforce a US monetary judgment in the English courts if the judgment is conclusive and the foreign court had jurisdiction in the matter.

The English courts generally take a generous view of enforcing foreign court judgments and the procedure is (by the standards of English legal proceedings) quick and cost-effective. Any party with a US court judgment in their favor ought to consider whether their opponent has assets in England and, if it does, to consider enforcing that judgment through the English courts.

It is generally very rare for the English courts not to enforce a foreign judgment if it is a final decision for a sum of money and if the foreign court is deemed to have had jurisdiction over the debtor.

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