



## Enforcing foreign judgements and arbitration awards in England and Wales

September 2010

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Legal 500, 2009

The first step in enforcing a judgment or award is to ascertain which set of rules apply. England is a party to several reciprocal regimes which allow for the enforcement of foreign judgments in England, without the need to commence fresh proceedings. Not all jurisdictions are covered by these reciprocal regimes. Accordingly, there are broadly four categories:

### Judgments

#### The European Regime

Under the Brussels Regulation 44/2001, a claimant who has obtained a judgment in one EU member state may enforce it in another member state without issuing separate proceedings. The regulation covers all judgments in civil and commercial matters obtained on or after 1 March 2002 except, amongst other things, insolvency and arbitration. Applications for registration should be made within 6 years of the date of the original judgment.

There are still circumstances where the old European regime (i.e. the Brussels Convention and the new and old Lugano Conventions) may apply, for example to judgments given before the Brussels Regulation came into effect.

Under Regulation 805/200 (which came into force in October 2005), judgments made on 21 January 2005 and after can also be certified as a European Enforcement Order (EEO) if they relate to uncontested claims in civil or commercial matters. Uncontested claims are claims which, in the course of the court proceedings, the debtor has admitted/settled or has never objected to, or claims in relation to which the debtor has never appeared or been represented at court after initially objecting to the claim. The effect of the EEO is that a judgment obtained in one EU member state can be immediately enforced in the courts of another EU member state (where the defendant has assets) without requiring the judgment to first be formally recognised or registered. This regime does not apply to Denmark.

#### Other Reciprocal Regimes

Where the judgment originates in a non-EU country, there may be other statutory or bilateral conventions that could be relied upon to enforce the judgment in England and Wales.

The Administration of Justice Act 1920 provides for the enforcement by registration of certain judgments from the courts of many colonial and commonwealth countries (for example Barbados, the BVI, Singapore and New Zealand). This covers judgments made by the higher courts of those countries.



The UK has also entered into bilateral treaties with some countries (for example Australia, Guernsey, India and parts of Canada) pursuant to the Foreign Judgments (Reciprocal Enforcement) Act 1933 which allow the judgments of the higher courts of those countries to be enforced by registration. It applies only to money judgments (excluding taxes, fines or penalties).

The Civil Judgments and Jurisdiction Act 1982 applies to the registration and enforcement of a judgment in a jurisdiction within the UK. There are 3 separate jurisdictions within the UK: England and Wales; Scotland; and Northern Ireland. This Act does not however apply to judgments from e.g. the Channel Islands and the Isle of Man (for which you would have to use the 1933 or 1920 Act regimes).

## Countries with no Reciprocity

Where no reciprocal regime exists with a country (for example China, the USA and most of Canada (see above for other parts of Canada)), a party who has obtained judgment in that country must bring a fresh action, relying on common law, to enforce in England. The fresh action must be brought within 6 years from the date of the original judgment. For procedural purposes, the foreign judgment is sued upon as a debt between the parties, arising out of an implied promise by the debtor to pay the amount of the foreign judgment. A summary judgment will often be sought, on the basis that the defendant has no real prospect of defending the claim. (Note that for non-money foreign judgments, you will need to bring a fresh action for your original claim - that is also true for the 1920 and 1933 Acts).

The procedure for making an application to register a foreign court's judgment is set out in the Civil Procedure Rules for England and Wales. The judgment debtor must be notified of the registration. The judgment debtor will have some grounds for appeal (see further below) but generally these are limited. If the debtor fails in their challenge (or the registration is not challenged at all), the judgment can then be enforced as if it were a judgment from the English courts.

### Defences:

These vary depending on which regime applies, but typical defences to an enforcement action include:

- Enforcement would be contrary to public policy
- The judgment is contrary to the rules of natural justice.
- An appeal is pending in the original jurisdiction.
- The judgment was obtained by fraud.
- The judgment conflicts with a prior judgment.

## Awards

### New York Convention

There is an entirely separate regime for the enforcement of arbitration awards from that applicable to court judgments. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards will apply and it is often the case that an arbitral award is easier to enforce than an English court judgment, in particular when enforcement is likely to take place outside Europe.

In England and Wales, the "reciprocity reservation" applies so that the English courts only apply the New York Convention to arbitral awards made in countries that are also party to the Convention.

Some 144 countries have signed up to the New York Convention, including the USA, China, India, Russia, most EU countries, Australia and Brazil.

The effect of the Convention is that an award which on its face is valid will be recognised and enforced by the court in the same way as if it were a judgment given by the English courts.

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Chambers UK, 2010

### Defences under the New York Convention:

The New York Convention provides for limited grounds on which the enforcement of a Convention award can be refused. For example:

- A party to the agreement was under some incapacity, or the agreement is not valid under the law to which the parties have subjected it.
- The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings.
- The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration.
- The composition of the arbitral authority was not in accordance with the agreement of the parties.
- The award has not yet become binding on the parties, or has been set aside or suspended.
- It would be contrary to public policy to recognise or enforce the award.

### Further information

If you would like further information on any issue raised in this update please contact:

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