



INTERNATIONAL DISPUTE RESOLUTION SPECIALTY GROUP

ENGLAND

QUESTIONNAIRE

The aim of this questionnaire is to provide a framework for each country representative to describe the process, procedure and any other relevant issues, involved in enforcing a foreign judgment in that country. The questionnaire deals with both enforcement of judgments and arbitral awards.

In the event that there are further issues not covered by the questions below that should be considered by a party attempting to enforce a foreign judgment in a particular country, please include an appropriate question and answer, which deals with this issue.

PART I: ENFORCEMENT OF FOREIGN JUDGMENT

Enforcement

1. What procedures exist for recognition and enforcement of foreign judgments pursuant to conventions?

There are three statutory schemes providing for the enforcement of foreign judgments in England and Wales. They are:

1. The Administration of Justice Act 1920;
2. The Foreign Judgments (Reciprocal Enforcement) Act 1933; and
3. The Civil Jurisdiction and Judgments Act 1982 (incorporating into English Law, as appropriate, the provisions of the Brussels & Lugano Conventions and Council Regulation (EC) No. 44/2001 ("the Jurisdiction and Judgments Regulation").

The above statutory schemes and enforcement at common law are not mutually exclusive. Generally, however, a statutory scheme is preferable, if available, as its regime tends to be more favourable to the parties seeking enforcement than the common law procedure. The common law enforcement procedure is considered No. 2 below.

The choice of the appropriate enforcement convention depends on the country of origin of the judgment.

- **Administration of Justice Act 1920 ("AJA 1920")**

An application can be made under AJA 1920 for registration in the High Court of a judgment of the superior court of a Commonwealth country within 12 months of the date of the judgment in question. A list of members of the Commonwealth may be found at www.commonwealth.org/Templates/Internal.asp?NodeID=142227.

- **Foreign Judgments Reciprocal Enforcement Act 1933 ("FJREA 1933")**

Application may be made for the registration of judgments of recognised courts and tribunals of states with which England and Wales have concluded reciprocal enforcement arrangements under the FJREA 1933. Any application for enforcement must be made within 6 years of the judgment of the foreign court. There are reciprocal enforcement arrangements under the FJREA 1933 with the following foreign countries: Austria, Belgium, France, Federal Republic of Germany, Israel, Italy, The Netherlands, Norway, Suriname and Tonga.

Note, that all of the above countries except Israel, Suriname and Tonga are now parties to the Jurisdiction and Judgments Regulation. FJREA 1933 also extends to judgments of recognised courts of the following Commonwealth countries:

Australia, Australian Capitol Territory, The Federal Court of Canada and any Court in the province of British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan or the Yukon Territory, Isle of Guernsey, Isle of Man, Bailiwick of Jersey, certain territories of the Republic of India, and Pakistan.

- **Civil Jurisdiction and Judgments Act 1982 ("CJJA 1982")**

Section 4 of CJJA 1982 provides that a judgment of a court of another contracting state to the Brussels Convention, the Lugano Convention (Iceland, Norway and Switzerland are signatories to the Lugano Convention) or the Jurisdiction and Judgments Regulation, will, once registered, have the same force and effect as if the judgment had been given in this country.

The provisions of the Jurisdiction and Judgments Regulation as applied by CJJA 1982 govern the enforcement of judgments from all EU countries other than Denmark. Denmark remains a signatory to the Brussels Convention as it opted out of the Jurisdiction and Judgments Regulation. Judgments and proceedings instituted in EU countries prior to 1 March 2002 (when the Jurisdiction and Judgments Regulation came into force) will still be enforced in accordance with the provisions of the Brussels or Lugano Conventions, as appropriate, under the Civil Jurisdiction and Judgments Act 1982.

The rules for registration in England and Wales of foreign judgments under any of the above statutes/conventions are set out in rules 74.2 – 74.11 of the Civil Procedure Rules. We do not reproduce detailed provisions of those rules here. However, in all instances an application (for registration of the relevant foreign judgment) must be made to court supported by written evidence.

2. What procedures exist for recognition and enforcement of foreign judgments pursuant to statute or common law?

For enforcements pursuant to statute, see 1 above.

At common law a foreign judgment is considered to create an implied contract to pay which may be enforced in England subject to certain defences. Broadly speaking, a party seeking to enforce in this way would have to issue fresh originating proceedings for a declaration and seek summary judgment in the amount of the foreign judgment on the grounds that the Defendant had no reasonable prospect of defending the claim i.e. the foreign judgment cannot be enforced directly. It is simply a basis (like any other debt) for commencing fresh originating proceedings. This can be expensive and time consuming and not always successful. For a judgment to be enforceable in this way, the foreign court must have had jurisdiction over the Defendant according to English conflict of laws rules, the judgment of the foreign court must be conclusive on the merits and the claim must be for a definite sum or an amount ascertainable by a simple calculation. A claim for enforcement of a foreign judgment at common law is subject to the defences of fraud, being contrary to public policy or that the relevant foreign proceedings were contrary to natural or substantive justice.

3. Are there any practical problems or special time factors that a party seeking to enforce a foreign judgment should bear in mind?

See section one for time limits pursuant to conventions. See 2 above for common law problems.

An action for summary judgment in relation to a foreign judgment will be subject to a limitation period of 6 years.

4. Are there any public policy or other issues which may affect enforceability?

It would be contrary to public policy to recognise or enforce a judgment of a foreign court obtained in disobedience of an injunction of the English Court not to proceed with litigation in the foreign forum.

A foreign judgment that is inconsistent with a previous decision of an English Court of competent

jurisdiction in proceedings between the same parties will not be recognised or enforced, because the rule of *res judicata* is a rule of public policy in English law.

No recognition will be accorded to a foreign judgment obtained in contravention of the rules of natural justice.

Enforcement of a foreign judgment sought under the Jurisdiction and Judgments Regulation may be refused on the grounds that it is contrary to public policy (for which see above), given in default of appearance where the Defendant was not correctly served with the documents instituting proceedings, irreconcilable with a previous judgment in a dispute between the same parties or that the court of the member state which gave judgment did not have jurisdiction over the dispute.

Limitation Issues

5. What are the time limits for bringing civil claims?

The Limitation Act 1980 (“LA 1980”) prescribes the following limitation periods for the most important classes of civil claims:-

<u>Class of Claim</u>	<u>Limitation Period</u>
1. Speciality (contracts by deed or mortgages)	12 years, LA 1980, s 8(1)
2. Contract	6 years, LA 1980, s 5
3. Tort	6 years, LA 1980, s 2
4. Personal injuries claims	3 years, LA 1980, s 11(4)

Confidentiality

6. A

re court proceedings confidential or public?

The general rule set down by the Civil Procedure Rules is that a hearing should take place in public.

However, the judge conducting the hearing may decide to hold the entire hearing or part of it in private. In making this decision he will have regard to any representations that have been made to him by the parties. The following issues are relevant to whether a hearing should be held in private:-

- a) publicity would defeat the object of the hearing;
- b) the hearing involves matters relating to national security;
- c) the hearing involves confidential information and publicity would damage that confidentiality;
- d) a private hearing is necessary to protect the interests of any child or patient;
- e) it is a hearing of an application made without notice and it would be unjust to any

- respondent for there to be a public hearing;
- f) the hearing involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - g) the court considers a private hearing to be necessary, in the interests of justice.

Starting proceedings

7. How are civil proceedings commenced?

Civil proceedings are generally commenced using a claim form (formerly known as a writ), which is issued by the court at the request of the claimant and against payment of the applicable fee. The claim form gives details of who the parties to the claim are and brief details of the claim, including any remedy sought. In all but the simplest cases, a separate document called "Particulars of Claim" will be filed by a Claimant to set out a detailed description of the claim.

Interim remedies

8. What interim remedies are available?

There is a wide range of interim remedies available including interim injunctions, freezing injunctions (regarding assets) and search orders. An interim remedy can be obtained before proceedings are issued, during proceedings, or even after judgment has been given.

Inter partes costs

9. Does the court have power to order costs or to order security for costs?

Costs

The general rule is that the court will order the unsuccessful party to pay the costs of the successful party. The court can, however, make a different order to costs if this is thought to be appropriate. All circumstances will be considered, including:

- (a) the conduct of all the parties;
- (b) whether a party has succeeded on part of his case, even if the party has not been wholly successful; and
- (c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention.

Security for costs

A claimant (not a defendant) may be required by the court to provide security for the defendant's costs. The usual way in which security for costs is provided is by the claimant paying a sum of money into court. The security for costs order will state the amount to be paid into court and the time-limit for making the payment. The most common grounds for obtaining an order for security for costs are:

- (a) that the claimant is resident out of the jurisdiction;
- (b) that the claimant is a company or other corporate body and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so.

Jurisdiction

10. If a contract has some connection with your jurisdiction, are there mandatory laws under the local law that would apply to the contract irrespective of the parties choice of law in the contract?

Generally English Courts will give effect to the choice of law chosen by the parties.

PART II: ENFORCEMENT OF ARBITRAL AWARDS

Enforcement

11. What procedures exist for enforcement of foreign awards?

There are two ways to enforce a foreign award: first, under the provisions of the Arbitration Act 1996 ("AA 1996") second, at common law, by an action on the award. Enforcement of an award complying with the terms of the New York Convention under the AA1996 is sought by way of a court application (made without notice to the Respondent) supported by the following evidence (a duly authenticated original award and the original arbitration agreement or certified copy thereof) pursuant to section 101 AA 1996.

An alternative to the statutory enforcement regime is an action on the award itself. In English law an arbitration agreement contains an implied term that the parties thereto will abide by the obligations created by any award. If this method of enforcement is chosen, a Part 8 Claim (broadly a standard court action but with substantially reduced fact finding components) is issued and summary judgment sought thereon.

Conventions

12. Is your country party to the New York Convention, Washington Convention and/or Geneva Convention?

New York Convention

Yes. Note that further to Article 1(3) of the New York Convention, the United Kingdom of Great Britain and Northern Ireland and its overseas territories of Belize, Bermuda, the Cayman Islands and Guernsey will only recognize and enforce, pursuant to the New York Convention, awards made in the territory of another Contracting State.

Washington Convention

Yes.

Geneva Convention

No. However, section 99 of the Arbitration Act 1996 (“AA 1996”) provides that Part II of the Arbitration Act 1950 continues to apply in relation to foreign awards within the meaning of that part to the extent that they are not also New York Convention awards.

UNCITRAL Model Law

13. Is the arbitration law based on the UNCITRAL Model Law?

AA 1996 does not incorporate the Model Law into domestic law as some nations have chosen to do. However, AA 1996 is heavily influenced by the UNCITRAL Model Law. For example, section 103 of AA 1996 referred to above in the section on enforcement mirrors almost exactly the language of Article 36 of the UNCITRAL Model Law.

Arbitrability

14. Are there arbitration awards which will not be enforced due to the subject matter of the dispute?

Yes. Section 103(3) AA 1996 provides that recognition of an award may be refused where the subject matter of the dispute is not capable of settlement by arbitration or if it would be contrary to public policy to recognize or enforce the award.

SPECIFIC FEATURES

15. Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

No.