



## International Enforcement of English Asset Recovery Judgments

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*Cooley discusses the international enforcement of English asset recovery judgments.*

Civil proceedings brought by the state or a state entity are one mechanism to recover the proceeds of corruption, or to claim compensation for corrupt acts.

Typically, substantial corruption cases are international in scope. The proceeds of a corrupt transaction are often laundered through and to countries other than the victim state; assets are typically held by companies and trusts incorporated or managed in offshore or other jurisdictions; and wrongdoers may be located in various countries.

The international context means there are a number of countries in which civil claims can be made. It also means that corrupt assets may be located in a number of countries. If so, it is usually inefficient and costly to bring proceedings in each of those jurisdictions. It is often preferable to make a single claim leading to a judgment which can successfully be enforced in each country where assets are located.

### Seeking legal advice

The ease or difficulty, with which a judgment can be enforced against foreign assets, where necessary, should be one of the key factors in the minds of lawyers and their clients when formulating an asset recovery strategy.

Too often enforcement is viewed as a mechanical stage at the end of the litigation process and is given little thought at the start of a claim.

It is critical, at the outset, to get good local advice from lawyers in the jurisdictions in which assets are held and where enforcement will be sought.

Even where clear legal mechanisms appear to be available for the enforcement of judgments, there may be very significant difficulties in practice, not least in countries

where the legal process is very slow or subject to lengthy appeals.

If enforcement is impossible or difficult, the strategy will need to be adjusted. Plainly, states will wish to avoid the expense and delay that will be caused by having to fight the case multiple times in different countries, or where there are significant hurdles to enforcement in a timely manner.

### The popularity of the English courts

The English courts are an attractive jurisdiction for civil asset recovery cases. This is for a number of reasons including: the availability of powerful legal weapons to assist claimants to find and secure assets, such as freezing injunctions and orders requiring disclosure by third parties such as banks; the willingness of the courts to deploy those weapons in cases of fraud; the efficiency and reputation of the English courts; and the wide jurisdiction to take on cases. In addition, English judgments are enforceable and respected in many foreign countries.

### Routes to enforcement of an English judgment

Broadly speaking, there are three possible "routes" to the enforcement of an English judgment. Their applicability is determined by the country in which enforcement is sought:

#### **Route 1 – Enforcement within the European Union, and in other European states**

The basic principle is that judgments of the courts of one member of the European Union should be readily enforceable in the courts of the other. This applies to contested and uncontested claims.

#### ***European Enforcement Order***

States may enforce uncontested judgments under the European Enforcement Orders Regulation (the "EEO Regulation"). A judgment is considered uncontested for these purposes if it is derived from a consent order

approved by the court, or if the defendant either did not object to the claim or failed to appear in the proceedings after initially objecting to the claim.

If the EEO Regulation applies, the claimant may apply for a European Enforcement Order ("EEO") certificate from the court where the judgment was entered. Once the judgment is certified, it is automatically enforceable in the court of any other member state as if the judgment had been obtained by a court of that member state.

### **European Payment Order**

An even quicker and cheaper option is the European Payment Order ("EPO"). This provides a simplified procedure for cross-border, uncontested claims for a specific amount. There is no requirement to obtain judgment before submitting an application for an EPO. An EPO, at least in theory, should be automatically enforceable in every EU country if it is uncontested by the defendant.

### **The Brussels Regulation and Lugano Convention**

The European Union also has a mechanism for the mutual enforcement of judgments obtained in contested cases.

The Brussels Regulation governs enforceability of contested judgments as between all European Union member states, except for Denmark (in respect of which an earlier instrument called the Brussels Convention applies).

The 2007 Lugano Convention governs the enforcement of judgments between European Union member states and the European Free Trade Association states of Switzerland, Norway, Liechtenstein and Iceland.

Under these regimes, a judgment can only be enforced if it relates to a "civil or commercial matter" and does not fall within one of the exclusions (which, broadly, cover bankruptcy or insolvency proceedings, proceedings relating to legal capacity and proceedings relating to property rights arising out of matrimonial relations, wills and succession). A judgment in a corruption case will generally fall within the applicable regime.

Enforcement is not automatic, although it should not be difficult. In basic terms, the regimes allow a state seeking enforcement of a judgment to make an application for "recognition" or a "declaration of enforceability" in the courts of the state where enforcement is required. The application is usually straightforward and should require only a copy of the judgment, the completion of a standard form certificate, and certified translations of these

documents. If the judgment is "recognised" by the foreign court, its enforcement should be a simple matter.

### **Route 2 – Treaty Countries**

Where enforcement is sought in a country outside the European Community with which the United Kingdom has entered into an enforcement treaty, the provisions of the relevant treaty will govern the procedure for enforcement of judgments and the circumstances in which enforcement can be challenged.

The United Kingdom has reciprocal enforcement arrangements in place with a large number of non-EU countries, particularly with Commonwealth nations. Under the English procedural rules, the enforcement of judgments in countries where there is a reciprocal treaty is started by making an application for a certified copy of the judgment which is then sent to the relevant country. Rule 74 of the English Civil Procedural Rules sets out fully the procedure for making an application for a certified copy of the judgment and also contains the most up to date listing of countries and respective treaties governing enforcement.

### **Route 3 – The rest of the world**

If enforcement is required in a country outside of the European Community with no treaty arrangements in place, local law will govern the enforcement process. In these circumstances, a case often has to be fought and won again. However, an existing judgment should be persuasive and offer significant assistance, and may enable a second judgment to be obtained using summary procedures without the need for a full trial and lengthy preparatory work.

For example, the United Kingdom has no treaty in place with the United States. The United States Department of State website explains that "*there is no bilateral treaty or multilateral convention in force between the United States and any other country on reciprocal recognition and enforcement of judgments. Enforcement of judgments issued by foreign courts in the United States is governed by the laws of the states. Enforcement cannot be accomplished by means of letters rogatory in the United States. Under U.S. law, an individual seeking to enforce a foreign judgment, decree or order in this country must file suit before a competent court. The court will determine whether to give effect to the foreign judgment.*"

## Conclusion

This article is a whistle-stop tour of the available enforcement regimes. Obtaining a judgment, however hard-fought that may be, is not the end of the process. The time and costs involved in enforcement can often be considerable. Early analysis of the ease of enforcement is essential. Failure to engage in that analysis can lead to 'paper' judgments that cannot be enforced against foreign assets. A strategic and informed review of the facts and circumstances at the outset can, in enforcement and many other respects, maximise the likelihood of successful asset recovery.

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