



Standing International Forum
of Commercial Courts

Multilateral Memorandum on Enforcement of Commercial Judgments for Money

Second Edition
Featuring International Working
Group Commentary
www.SIFoCC.org



Contents

Foreword	3	The Philippines	94
Introduction	5	Singapore	96
Commentary	7	Sri Lanka	99
Africa	18	Australasia	102
The Gambia	19	Australia	103
Ghana	22	New Zealand	111
Kenya	24	Europe	114
Nigeria	32	France	115
Sierra Leone	34	Germany	118
Uganda	37	The Netherlands	121
The Americas and Caribbean	42	Republic of Ireland	123
Bermuda	43	United Kingdom	132
Brazil	46	Middle East	138
Canada	48	Abu Dhabi	139
Cayman Islands	53	Bahrain, Kingdom of	143
Eastern Caribbean	58	Dubai	144
Jamaica	61	Qatar	147
United States of America	65		
Asia	76		
China, People’s Republic of	77		
Hong Kong SAR	81		
Japan	84		
Kazakhstan	86		
Korea, Republic of	88		
Malaysia	91		



Foreword

SIFoCC is delighted to publish the second edition of its Multilateral Memorandum on Enforcement of Commercial Judgments for Money.

The number of entries has increased, and a number of entries have been revised.

The importance of this endeavour deserves emphasis. Enforcement of judgments in accordance with the law is a significant part of upholding the rule of law. Commerce and business are often international. In this volume the judiciaries of more than 30 jurisdictions the world over – from South Korea to Brazil, from Uganda to China, from Australia to Germany, from Singapore to Canada, from England to Japan – summarise as simply and as transparently as possible how they can each go about enforcing the commercial judgments of each other. The summaries are not binding, but they can only be helpful.

The focus is not on treaties between two or more countries but on how one jurisdiction can respond to the judgments of the many others from all parts of the world. Where confidence in reciprocity is needed, these summaries may help provide or contribute to that confidence, as for reciprocity to work well one country must be ready to be the first to enforce.

The initiative also reveals how much jurisdictions have in common. A SIFoCC International Working Group, co-chaired by Sir William Blair (former Judge in Charge of the Commercial Court of England & Wales) and Judge Francois Ancel (President of the International Commercial Chamber of the Cour d'Appel, Paris, France), has produced a commentary which distills the shared common themes.

I would like to thank all contributing jurisdictions. We all owe a debt of real gratitude to Grace Karrass who, as SIFoCC Head of Secretariat, has led this publication.



Lord John Thomas of Cymgiedd

Chairman of the Steering Group of SIFoCC

Former Lord Chief Justice of England and Wales

April 2021



Introduction

SIFoCC

In May 2017 a large number of the world's commercial courts convened in London. Many of the judicial delegations were represented at Chief Justice level. The Standing International Forum of Commercial Courts (SIFoCC) was formed. Around 40 jurisdictions are now members of SIFoCC.

SIFoCC exists for three reasons:

1. Because users – that is, business and markets – will be better served if best practice is shared between courts and courts work together to keep pace with rapid commercial change.
2. Because together courts can make a stronger contribution to the rule of law than they can separately, and through that contribute to stability and prosperity worldwide.
3. As a means of supporting developing countries long encouraged by agencies such as the World Bank to enhance their attractiveness to investors by offering effective means for resolving commercial disputes.

This memorandum

The first edition of this memorandum followed discussion at SIFoCC's first meeting and approval at its second meeting in New York in September 2018. This second edition includes additional and revised contributions.

Enforcement is among the subjects in which there is a common interest among commercial courts globally. It is relevant to the broad question of how the commercial courts of the world are to interrelate.

The memorandum sets out an understanding of the procedures for the enforcement of a judgment by the courts of one jurisdiction obtained in the courts of another jurisdiction. It is concerned only with commercial judgments requiring a person to pay a sum of money to another person, although some contributions touch on the position with other forms of judgment.

The aim is to demonstrate cooperation, provide a mutual understanding of laws and judicial processes in this area, and improve public perception and understanding.

Each section of the memorandum has been contributed by the judiciary of the jurisdiction concerned (with the exception of New York where the contribution was made as there described). The memorandum is multilateral, between all jurisdictions that are members of SIFoCC. In some cases, it follows a series of (bilateral) memoranda that were each between two jurisdictions.

The memorandum is designed to assist and to be used, but is of no binding legal effect. It does not constitute a treaty or legislation, and is not binding on the judges of any jurisdiction. It does not supersede any existing or future laws, judicial decisions or court rules.

Generally speaking, the memorandum does not aim to include procedures for enforcement of judgments where those are provided by treaty and are only in respect of some jurisdictions rather than others. Its particular focus is as a summary of the procedures for the enforcement of judgments of commercial courts worldwide. That said, some contributions do address procedures provided by treaty. Further, the 2005 Hague Convention and European rules are dealt with separately below.

The 2005 Hague Convention

Some SIFoCC jurisdictions are also parties to the 2005 Hague Convention on Choice of Court Agreements. This creates an international legal regime that is intended to ensure the effectiveness of exclusive choice of court agreements between parties to commercial transactions and to provide for the recognition and enforcement of judgments resulting from proceedings based on those agreements.

The Convention (a) requires the courts of a party to the Convention chosen by contract to accept jurisdiction in a dispute, (b) requires the courts of other parties to the Convention to decline jurisdiction and (c) provides for enforcement by all countries of the judgments of the courts chosen in the contract. It is limited to exclusive choice of court agreements concluded in civil or commercial matters.

Certain categories of dispute are excluded from the scope of the Convention, including carriage of goods, insolvency and antitrust.

European rules

At present, the enforcement of many judgments given by the courts of an EU Member State¹ (and Norway, Iceland and Switzerland)² is governed by European rules.

The broad aim has been that judgments of another Member State should be automatically recognised and enforced. The defences to enforcement and recognition are also limited (they are, principally, public policy and natural justice).

Mr Justice Robin Knowles

Judge with day-to-day responsibility for SIFoCC

December 2020

¹ Under what is known as the Brussels regime.

² Under what is known as the extended Lugano regime.

Commentary

Introduction

1. The second edition of the Standing International Forum of Commercial Courts (SIFoCC) Multilateral Memorandum on Enforcement of Commercial Judgments for Money (MME) was published in December 2020. Since the first edition was published in 2018, the number of contributions has increased, and a number of contributions have been revised. There are now summaries from 37 jurisdictions in 32 states. We express our sincere appreciation to the judges who prepared these contributions.
2. The object of this commentary is to distil the summaries on enforcement of commercial judgments for money from the MME and provide an explanatory commentary by way of introduction for the second edition.
3. The commentary seeks to bring together common themes that appear from the contributions, identify where there appears to be significant differences of approach, and discuss how far the contributions appear to show a tendency towards convergence.
4. The MME sets out an understanding of the procedures for the enforcement of a foreign judgment, that is, the enforcement by the courts of one jurisdiction of a judgment obtained in the courts of another jurisdiction.
5. The MME does not purport to be of binding effect and is not intended to “signal” the enforceability of the judgments of commercial courts. The perspective offered is a different one, namely as to how the courts which have contributed to the memorandum approach requests for the enforcement of judgments of other courts. It should be kept in mind that the same terms may be used in individual contributions to mean different things. In any case, the contributions should not be treated as a source of statements as to the law and vary in their scope and depth of analysis. The rules as to the enforcement of foreign judgments are complex and specialist advice should always be taken.
6. The academic literature in this field is rich and notable for its high quality. Recently, there has been a growing interest in the enforceability of foreign commercial judgments because of the increasing interconnectedness of international trade, with its contemporary characteristic of supply chains. The unique quality of the MME is to bring together judicial contributions, from judges whose judiciaries have to deal with applications for recognition and enforcement. The MME is therefore a specifically judicial perspective.
7. The aim is to demonstrate co-operation, provide a mutual understanding of laws and judicial processes in this area, and improve public perception and understanding.
8. The MME consists of a foreword by Lord Thomas of Cwmgiedd (Chair of the Steering Group of SIFoCC) and an introduction by Hon Sir Robin Knowles CBE (judge with day-to-day responsibility for SIFoCC). The summaries are organised by geographic area, being Africa, the Americas and Caribbean, Asia, Australasia, Europe and the Middle East.

Subject area of MME

9. The MME covers foreign commercial judgments for money. What is meant in this commentary by the terms 'foreign', 'commercial' and 'judgments for money'?
10. The term 'foreign' is used in this commentary to mean a judgment obtained in the courts of one state (or jurisdiction) in respect of which enforcement is sought in the courts of another state (or jurisdiction). Some of the contributions come from states with federal or quasi federal constitutions. While there may be differences between rules as to recognition and enforcement of foreign judgments, the contributions from these states do not generally consider the enforceability of judgments between internal jurisdictions of the same state. Four of the contributions come from the courts of 'international financial centres' in which the rules may differ from those of the states in which they are located.
11. The term 'commercial' is used in a general rather than a jurisdictional sense and refers to judgments arising out of disputes in commercial contracts which in the present context will often be international. Some areas of commercial activity raise particular issues as to enforcement (intellectual property being an example) and the approach will not necessarily be the same.
12. The judicial contributions do not appear to show commercial disputes receiving separate treatment as a discrete category.
13. Nevertheless, it is reasonable to take the view that, with exceptions, and subject to rules and safeguards, it is desirable in principle that commercial judgments with an international dimension of the courts of one jurisdiction should generally be recognised in other jurisdictions. This is, for example, the approach of the Asian Principles for the Recognition and Enforcement of Foreign Judgments (which apply in "commercial matters" – see below footnote 3). Whether courts in fact approach the issue in this way is a different question on which the MME seeks to shed some light.
14. This is particularly apposite where the contractual documentation identifies the court of a particular country as having jurisdiction over disputes. But it is not restricted to that situation. The distinction is brought out by the work of the Hague Conference on Private International Law (HCCH). There are two conventions now, the first dealing with cases where there is a contractual choice of court (2005 Hague Convention on Choice of Court Agreements) and the second dealing with cases which are not restricted to such situations (2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters).
15. The term 'judgments for money' is used in this commentary to mean judgments for a stated sum of money or a sum that can be arithmetically calculated from the judgment itself. Recognition and enforcement of non-money judgments can raise separate issues from judgments for money, and though some contributions touch on the position in their respective jurisdictions, this commentary is restricted to money judgments. This should not be taken to suggest any antipathy in the attitude of the contributing courts to non-money judgments.
16. Finally, there is a distinction between recognition and enforcement of foreign judgments. Where a claimant seeks to have the judgment executed or otherwise carried out against the judgment debtor, it is seeking enforcement. Where the person in whose favour the judgment is given merely seeks to resist a claim in the same or a connected matter by reliance on a ruling on a particular issue in his favour or the judgment as a final adjudication of the

issues in dispute, it is seeking recognition. Despite this distinction, the two concepts are linked and for some purposes treated together. There cannot be enforcement of a foreign judgment without recognition (the converse is not necessarily true – e.g. a defendant pleading *res judicata* does not require enforcement, if the plea is upheld, it has a defence).

Background

17. As indicated above, it is reasonable to take the view that international trade and commerce benefits from the international recognition and enforceability of foreign judicial decisions (as well as international arbitral awards) and commercial disputes are an important subset of such decisions.
18. The question is, what are the means, and what are the criteria? Recognition and enforcement of foreign judgments is achieved by two main routes:
 - Processes for recognition and enforcement under bilateral or multilateral agreements between states (and statutes and regulations made pursuant thereto).
 - Judicial process (in reliance on statutory and non-statutory routes such as the case of recognition and enforcement at common law).
19. Generally speaking, the MME does not aim to include procedures for enforcement of judgments where those are provided by treaty and are only in respect of some jurisdictions rather than others. Its particular focus is as a review of the procedures for the enforcement of judgments of commercial courts worldwide. Nevertheless, regional multilateral conventions are an important part of the background. These have a long history in regions such as Latin America, but are relatively rare or non-existent in some other regions. For the record, the

main multilateral treaties/conventions include the following:

- a. Worldwide:
 - i. The 2005 Hague Convention on Choice of Court Agreements applies where there is an exclusive jurisdiction clause in the parties' contracts. As in the case of arbitration, the court's jurisdiction is based on the parties' agreement (the European Union, Denmark, Montenegro, UK, Mexico and Singapore are currently parties). The Convention provides for the recognition and enforcement of judgments resulting from proceedings based on those agreements.
 - ii. The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters aims to become the equivalent, for court judgments, of the 1958 New York Convention for foreign arbitral awards (the 2019 convention is not yet in force).
- b. The Americas and Caribbean:
 - i. The Inter-American convention on extraterritorial validity of foreign judgments and arbitral awards of 1979 (a convention of the Organization of American States). Neither Canada nor the United States are parties.
 - ii. The Caribbean Court of Justice is the Caribbean regional judicial tribunal established on 14 February 2001 by the Agreement Establishing the Caribbean Court of Justice. The CCJ is intended to be a hybrid institution: a municipal court of last resort and an international court vested with original, compulsory

and exclusive jurisdiction in respect of the interpretation and application of the Revised Treaty of Chaguaramas. That treaty contains provisions that any judgment, decree, order or sentence of the Court given in the exercise of its jurisdiction shall be enforced by all courts and authorities in any territory of the contracting parties as if it were a judgment, decree, order or sentence of a superior court of that contracting party.

c. Australia and New Zealand:

- i. Though bilateral rather than multilateral, it is noted that separate arrangements exist between Australia and New Zealand, which, amongst others, permit the recovery in Australia of New Zealand tax debts, which is not the case under the Foreign Judgments Act 1991 (Cth) or under private international law, see Trans-Tasman Proceedings Act 2010 (Cth) s 79(2); FJA s 3 (definition of "enforceable money judgment").

d. Europe:

- i. Where foreign decisions are given in a member state of the European Union, the Regulation No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) shall apply. This regulation provides that a judgment given in a member state which is enforceable in that member state shall be enforceable in the other member states without any declaration of enforceability being required (Article 39).

- ii. The Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters signed in Lugano on 30 October 2007 applies between the European Union and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland). Article 33(1) of the convention provides that a judgment given in a state bound by the convention shall be recognised in the other states bound by the convention without any special procedure being required. Article 38(1) provides that a judgment given in a state bound by this convention and enforceable in that state shall be enforced in another state bound by the convention when, on the application of any interested party, it has been declared enforceable there.

e. Middle East:

- i. The Riyadh Arab Convention for Judicial Co-operation 1983, the Gulf Co-operation Council Convention for the Execution of Judgments, Delegations, and Judicial Notifications 1997.

20. Examples also appear where multilateral arrangements are achieved by domestic legislation. Uganda's Judgment Extension Act Cap 12 applies to three countries, whose judgments may be enforced, namely Malawi, Kenya and Tanzania.

21. In the absence of a treaty, and where necessary domestic legislation give effect to the treaty (or similar arrangements) in domestic law, the rules are determined by the judicial processes in each state in which enforcement or recognition of the foreign judgment is sought.

22. These judicial processes remain very important. One reason is the potential for flexibility and evolution in the principles applied. Another is that the task of agreeing binding international principles for recognition and enforcement of foreign judgments, in the same way as agreed in the New York Convention for foreign arbitral awards (which has been highly successful in achieving global coverage in the case of international arbitration awards), has not proved straight forward.

23. However, this difficulty that this disparity has created should not be overstated. Courts have recognised and enforced foreign judgments for many years.

For example, at common law, the courts of England & Wales have recognised and enforced foreign judgments from the 17th century onwards³.

24. In later years, recognition and enforcement regimes have readily been created by domestic statute.

For example, Australia's Foreign Judgments Act 1991 (Cth), based on reciprocity, with a registration procedure.

25. The purpose of the MME is more specifically to present the domestic rules for the enforcement of foreign judgments outside the scope of bilateral and multilateral agreements from a practical judicial perspective by considering both common law and civil law systems.

26. Proceedings at common law in cases where there are no treaty arrangements are a continuing source of recognition and enforcement in most, if not all, common law jurisdictions contributing to the MME. These may be based on case law applying the 'obligation theory'. In this regard, the theoretical basis for the

enforcement of foreign judgments at common law is that they are enforced on the basis of a principle that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained (England & Wales). An alternative basis is judicial comity, a presumption of foreign judgment validity rooted in common law doctrine of 'comity', which favours respect for the sanctity of the foreign jurisprudence with limited exceptions (New York), or by enactment.

For example, US Uniform Foreign-Country Money Judgments Recognition Act (UFMJRA) which codifies common law jurisprudence as applied in the United States.

27. The recognition and enforcement of foreign judgments in civil law countries by judicial process where there are no treaty arrangements might be governed by statutes (e.g. Germany) or case law (e.g. France).

28. As regards recognition and enforcement by judicial process, however, the contributions to the MME show a well-recognised difference between common law and civil law jurisdictions (with some exceptions, such as the Netherlands, which gives principles of comity as a ground for recognition⁴).

29. The civil law jurisdictions contributing to the MME do not appear to have a precise equivalent of recognition and enforcement at common law, which results in the judgment creditor obtaining a judgment of the recognising court which it can proceed to enforce as such.

³ Dicey & Morris, *The Conflict of Laws*, 15th edn para 14-007 et seq.

⁴ See page 111 of the MME.

- 30.** Finally, the contributions of the ADGM Courts and DIFC Courts include details of bilateral memoranda of guidance entered into by the courts with the courts of other jurisdictions. The purpose is to establish that the court's judgments will be recognised and enforced in the countries with whom MOGs are signed, and to provide information to the legal and business communities on the differences (if any) between recognition and enforcement principles and procedures of the two countries.

Commentary on the MME – common themes

- 31.** As noted above, the commentary seeks to bring together common themes that appear from the contributions – it does not purport to state common principles arising from the contributions, and this seems unnecessary now that the Hague Conference has concluded its work on the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The themes identified below all appear to be consistent with and supportive of the approach of the Convention.
- 32.** In identifying these common themes in the context of commercial matters, it appears that overall, the following classification reflects the substance of the summaries of judges of the courts of the States included in the MME:
- The main prerequisites to recognition and enforcement of foreign judgments generally required by courts.
 - The substantive conditions generally required by courts.
 - Certain procedural aspects applied by the courts which are also mentioned in contributions to the MME.

Some courts may treat particular matters as requirements for the recognition and enforcement of a foreign judgment and others treat the same matters as potential bars to recognition and enforcement if otherwise available, but the effect is the same. The matters are sometimes discretionary and sometimes mandatory, and not necessarily expressed in the same terms, or in the same terminology, or at the same stage in the process⁵.

- 33.** Common themes:

Main prerequisites to recognition and enforcement of foreign judgments

- The court of origin must have had jurisdiction.
 - Whether the court of origin had jurisdiction is determined by the conflict of law rules of the enforcing state, not by the rules of the court of origin. Across the common law jurisdictions, this is determined by considerations such as whether the defendant resided or had a place of business in the country concerned, or appeared in the law suit (other than to contest jurisdiction), or by prior submission e.g. by a choice of jurisdiction in a contract, or by counterclaiming. Canada applies a real and substantial connection test. In France and South Korea this is considered a matter of international jurisdiction (which is not established if the dispute fell under the exclusive jurisdiction of another court). Similarly, the Netherlands requires that the foreign court had jurisdiction under 'generally accepted rules'.
- The judgment must be final.
 - The foreign judgment must be final in the sense of conclusive between the parties on the merits of the case,

⁵ It may be noted that a number of these issues also arise in the insolvency context, and are referenced in the UNCITRAL Model Law on Recognition and Enforcement of Insolvency – Related Judgements and the accompanying text – Guide to Enactment: <https://uncitral.un.org/en/texts/insolvency/modellaw/mlj>.

binding, sufficiently final and clear (Canada), no longer subject to the court's ordinary review (South Korea). At common law, and seemingly in most jurisdictions covered, the fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive. However, the judicial contributions from the Philippines, Germany and Bahrain specifically state that the judgment must no longer be appealable.

- (3) Certain kinds of money judgment (which could otherwise be considered commercial judgments) may be excluded.
 - In common law systems, foreign judgments in respect of taxes, fines or other penalties are not enforceable.
- (4) The merits of the judgment are not reviewed by the court considering recognition and enforcement.
 - Where a court is asked to recognise and/or enforce a foreign judgment, it does not inquire as to the underlying merits of the case. A bar on examining the substance of the case (*révision au fond*) appears to be the position across common law and civil law jurisdictions. This is to be contrasted with the procedural aspects of the case, and in particular whether the defendant was accorded due process, the absence of which may be a bar to recognition – see below.
- (5) Subject to the above, all jurisdictions contributing to the MME appear to recognise foreign judgments for money, according to the procedures and conditions applying in those jurisdictions.
- (6) Such judgments are eligible for enforcement, again subject to the procedures and conditions applying in those jurisdictions, or may give rise to *res judicata* considerations.

Principal grounds for recognition and/or enforcement (or treated as bars to recognition and/or enforcement)

- (7) The defendant must have had proper notice of the proceedings in the originating court.
 - Proper notice does not mean knowledge of the proceedings, which is irrelevant, but notice of the proceedings in a legal sense. Thus, the defendant must have been properly served (excluding service by publication or any other service similar thereto) with the requisite summons for the commencement of the litigation or have appeared in the foreign court without being so served (Japan).
- (8) Absence of fraud: Recognition and enforcement may be impeached where the judgment was obtained by fraud.
 - This rule is often framed in terms of the judgment having been 'obtained' by fraud. An allegation of fraud can only be raised in respect of the manner in which the judgment was obtained (Kenya) as where judgment was rendered under fraudulent conditions (France), as opposed to fraud as a substantive issue for determination in the foreign proceeding. The court is in this sense concerned with extrinsic fraud (Pennsylvania) which may, for example, have deprived the losing party of an adequate opportunity to present its case (Delaware). A judgment obtained by fraud violates South Korea's public policy and is not enforceable for that reason.
- (9) Compliance with public policy: recognition and enforcement may be impeached on the grounds that its enforcement or recognition would be contrary to the public policy of the enforcing state.
 - In some states, recognition and enforcement may be withheld or

impeached where there has been lack of due process or procedural fairness in the proceedings before the court of origin according to the principles or fundamental rights of the enforcing state. Similarly, recognition and enforcement may be withheld or impeached if the proceedings in which the judgment was obtained were opposed to natural justice (that is to say, they involved a substantial denial of justice). Most contributions acknowledged these as fundamental requirements.

- The judgment is inconsistent with a judgment given by a court of the requested state in a dispute between the same parties: The German contribution notes that recognition may be hindered if the foreign judgment contradicts a judgment delivered in Germany or a judgment handed down abroad, or if the proceedings on which such judgment is based are incompatible with other proceedings in Germany. The Irish contribution cites case law to the effect that enforcement should not normally be granted where enforcement proceedings have already been determined or are pending in another country – this will doubtless depend on the facts, but it shows that *lis pendens* may be an issue ideally to be treated practically as in the case of pending appeals in the country of origin.

Reciprocity

- (10) Reciprocity requires further explanation. Reciprocity is (by definition) a feature of treaties and other bilateral or multilateral arrangements between states for the mutual recognition and enforcement of judgments. This applies equally to civil and common law jurisdictions. The contributions to the MME show that many common law jurisdictions have statutory mechanisms by which judgments of courts of particular states can be recognised and enforced. It is unclear from the contributions how frequently such procedures are used.
- (11) In some civil law jurisdictions, reciprocity is both a requirement of, and a ground for, recognition and enforcement by judicial process in the absence of a treaty.
- (12) Reciprocity is stated to be a requirement of recognition and enforcement by judicial process in the contributions from China, Japan, Kazakhstan, South Korea, Germany, and the Abu Dhabi Global Market Courts. However, how that requirement is applied is important.
- (13) Reciprocity is not stated as a requirement in the contributions from Brazil, France, the Netherlands or the Philippines.
- (14) The contribution from South Korea notes that the Korean Supreme Court maintains a liberal approach with respect to reciprocity, and the position appears to be the same in Japan⁶. The contribution from China notes the Nanning Declaration of 2017 by which a relationship of reciprocity may be assumed to exist (to the extent permissible under national law) if the foreign country has not refused to recognise and enforce judgments on reciprocity grounds ("presumed reciprocity").

⁶ Asian Principles, *ibid*, p. 68-69, where it is described as "de jure reciprocity", the Supreme Court having held that " ... reciprocity exists if the conditions for the recognition of a similar type of Japanese judgments in that foreign country are not substantially different from the conditions set out in Japan's civil procedure rules".

- (15) The nature of the distinction between common law and civil law in this respect is that reciprocity is not a relevant factor as regards recognition and enforcement of a foreign judgment at common law (i.e. by judicial process not under a statutory regime).

Procedure

- (16) Statutes of limitation on judgment enforcement may apply with limitation times that can vary from two years (Canada, China) to 6 years (Gambia), 12 years (Kenya, Malaysia) or even 20 years (New York State).
- (17) Mandatory documents to be filed with the court are usually a certified copy of the foreign judgment issued by the registrar with a sworn translation and documents establishing that the judgment has effect or is enforceable in the state of origin.
- (18) In common law jurisdictions, a judgment creditor seeking recognition and enforcement of a foreign judgment at common law may be entitled to "summary judgment" without trial.
- The availability of the summary judgment procedure means in effect that enforcement is fast tracked, unless the judgment debtor can satisfy the court that there are real issues or an arguable defence to be tried. This is an important procedural point emphasised by many of the common law jurisdictions and means that where a defendant is clearly liable on the judgment, there are no lengthy proceedings required to recognise and enforce it. Once judgment is issued, the foreign judgment becomes liable to execution in the same way as a domestic judgment.

- (19) There is no discussion in the contributions as to whether a foreign judgment can (where appropriate) be considered severable, so as to be recognised and enforced in part, though there seems no reason why this should not be done in an appropriate case.

- (20) A further procedure that can be of practical note in some jurisdictions is the grant of freezing injunctions where it is necessary to safeguard assets while the question of recognition and enforcement is determined. Also, the contributions do not extend to the appeal procedures in the various jurisdictions from decisions granting or refusing

Conclusion

- (21) The summaries in the MME tentatively suggest a gradual drawing together of the approaches of the civil and common law jurisdictions, placing emphasis on the proposition that foreign commercial judgments for money may more generally be recognised and enforced, subject to well recognised matters such as jurisdiction, proper notice, finality, fraud, due process, public policy and non-review of the merits.

Sir William Blair

Justice, Qatar International Court

Judge François Ancel

Président de la Chambre commerciale internationale de la Cour d'appel de Paris

April 2021

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Judge Xi Xiangyang,
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China International Commercial Court,
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A map of the African continent is shown in a light grey tone. A dark grey silhouette of the continent is overlaid on top of the light grey map. In the bottom-left corner, there is a purple rectangular box containing the word "Africa" in white text. The background of the entire image is a solid dark grey.

Africa

The Gambia

The enforcement of foreign judgments in The Gambia is governed by two legislations, namely:

- v. Reciprocal Enforcement of Judgments Act (Act No. 12 of 1922) Cap 8:05 Vol 3 Revised Laws of The Gambia 2009
- w. Foreign Judgment Reciprocal Act (Act No. 3 of 1959) Cap 8:05 Vol 3 Revised Laws of The Gambia 2009

Reciprocal Enforcement of Judgments Act (Act No. 12 of 1922) Cap 8:05 Vol 3 Revised Laws of The Gambia 2009

Conditions for registration

1. This Act provides for judgments obtained in the High Court of England, Northern Ireland or in the Court of Session in Scotland to be registered accordingly in The Gambia on the conditions that:
 - a. The judgment was obtained in a superior court.
 - b. The judgment creditor applies to the High Court of The Gambia, at any time within 12 months after the date of judgment or such longer period as may be allowed by the High Court to have the judgment registered in the High Court.
2. Once these conditions are satisfied, the High Court of The Gambia may, if in all the circumstances of the case it thinks it is just and convenient that the judgment be enforced in The Gambia, order the judgment to be registered accordingly.

3. This Act can be extended to apply to areas outside the Commonwealth, through an order in the national gazette, where the minister is satisfied that there are reciprocal provisions made by the legislature of that other country with regards to the enforcement of judgments.

Procedure for registration

4. The Reciprocal Enforcement of Judgment Rules to the Act provide for the procedure to enforce judgments in The Gambia. As follows:
 - a. An application to register a judgment obtained in a superior court outside The Gambia under the Act shall be made by leave through an ex parte summons or by summons to the Chief Justice. If the application is made ex parte the Chief Justice shall direct the summons to be issued.
 - b. The application must be accompanied by an affidavit in support of the facts, exhibiting the judgment or a certified true copy of the judgment stating that to the best information of the deponent the judgment creditor is entitled to enforce the judgment.
 - c. The originating summons shall be served in the same manner as a writ of summons in The Gambia.
 - d. The order giving leave to register shall be drawn up and served on the judgment debtor, but where the application is made ex parte, service on the judgment debtor shall not be required.

- e. The order giving leave to register shall state the time within which the judgment debtor is entitled to set aside the registration.
- f. Notice of registration of the judgment must be served on the judgment debtor within a reasonable time after registration.
- g. No execution will issue on a judgment registered under the Act until after the expiration of the time limited by that order giving leave to register after service on the judgment debtor; the Chief Justice may at any time order that the execution is suspended for a longer time.

Non-registration

- 5. A foreign judgment will not be registered under this Act, if one of the conditions below exist, namely if:
 - a. The original court acted without jurisdiction.
 - b. The judgment was obtained by fraud.
 - c. The judgment debtor was neither carrying on a business nor resident in that jurisdiction and did not voluntarily submit to the jurisdiction of the court.
 - d. The judgment debtor being a party to the proceedings was not duly served with the processes of the original court and did not appear.
 - e. The judgment debtor satisfies the High Court that an appeal is pending or that he or she intends to appeal against the judgment.
 - f. The judgment was in respect of a cause of action, which for reasons of public policy could not have been entertained by the High Court.

Effect of registered judgment

- 6. Once a foreign judgment is registered under this Act:
 - a. It will have the same effect and force as a judgment obtained in The Gambia.
 - b. Proceedings may be taken as if it had been originally obtained by the High Court.
 - c. The plaintiff is not entitled to recover any costs of the action unless the High Court otherwise orders.

Setting aside registration of foreign judgments

- 7. Setting aside the registration of a foreign judgment is done by the judgment debtor making an application by an ordinary summons, instituted in the same manner as the procedure laid out above, proving one of the following grounds:
 - a. The judgment was not registrable or was registered in contravention of the law.
 - b. The judgment was obtained by fraud.
 - c. The enforcement of the judgment in The Gambia would be contrary to public policy.
 - d. The foreign court did not have jurisdiction over the defendant.
 - e. There was a breach of natural justice (the defendant was not given sufficient notice within which to defend the action).

Foreign Judgment Reciprocal Act (Act No. 3 OF 1959) Cap 8:05 Vol 3 Revised Laws of The Gambia 2009

8. This act makes provisions for the enforcement in The Gambia of judgments given in foreign countries which accord reciprocal treatment to judgments given in The Gambia.

Application

9. Similar to the other Act, this Act allows a judgment creditor with a foreign judgment to apply to the court at any time within six years after the date of the judgment, or where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the court, and on proof and compliance of the Act, the judgment will be registered.

Conditions for registration

10. These are the same as for Reciprocal Enforcement of Judgments Act, as detailed above.

Non-registration

11. Foreign judgments will not be registered if at the date of the application:
- It has been wholly satisfied.
 - It could not be enforced by execution in the country of the original court.
 - The judgment of the original court has been partly satisfied.
 - Where it appears to the minister that the treatment of recognition and enforcement accorded by the courts of any foreign country to judgments given in the court is less favourable, the minister has the power to make the foreign judgment unenforceable in The Gambia. Thus, reciprocity is key in the registration of foreign judgment.

12. If the judgment debt is in foreign currency, the judgment will be registered as if it were a judgment for such sum in the currency of The Gambia as on the basis of the prevailing rate of exchange at the date of the judgment of the original court.

Effects of a registered judgment

13. Once the judgment is registered;
- It shall for the purposes of execution be of the same force and effect as a judgment obtained in The Gambia.
 - It shall carry interest.
 - The court shall have the same control over the execution of a registered judgment as if the judgment had been a judgment originally given in the court and entered on the date of registration.
14. In The Gambia, any judgment given by a superior court of any jurisdiction is entitled for recognition and enforcement throughout The Gambia, provided there is a "reciprocity of treatment of foreign judgments" between The Gambia and that foreign country.

Ghana

1. By the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument 1993 (LI 1575), the President accorded enforcement privileges in Ghana to the judgments of the following courts: The Supreme Federal Court, Federal Court of Appeal and the State High Court of Brazil; the Cour De Cassation and the Cour d'Appel of France; the Supreme Court of Israel; the Corte D'Appello and the Corte di Cassazione of Italy; the Supreme Court of Japan; the Court of Appeal and the High Court of Lebanon; the Cours Supreme and the Cours D'Appel of Senegal; the Tribunal Supreme, the Audiencia Territorial and the Juez de Primera Instancia of Spain; the Court of Cassation and the Court of Appeal of the United Arab Republic; the High Court of England; the High Court of Northern Ireland; the Court of Session in Scotland; and any other court to which an appeal lies from any of those superior courts.
2. A foreign decision is not enforceable in Ghana under the Rules of Court unless it qualifies for registration and enforcement. The foreign judgment must comply with the following conditions under the Courts Act, 1993 (Act 459):
 - a. It must be a judgment of a superior court and not given on appeal from a lower court.
 - b. It must be final and conclusive between the parties.
 - c. It must be for a definite sum of money, and not be in respect of taxes, fines or penalties.
3. The foreign court must have jurisdiction over the action and this could be ascertained in the following circumstances:
 - a. If the judgment debtor being a defendant submitted to the jurisdiction of the court by appearing voluntarily in the proceedings otherwise than to protect or obtain the release of the property seized or threatened with seizure or to contest the jurisdiction of the court.
 - b. If the judgment debtor was plaintiff or being a defendant made a counterclaim in the proceedings in the original court.
 - c. If the judgment debtor being a defendant in the original court had before the commencement of the proceedings agreed to submit to the jurisdiction of the foreign courts.
 - d. Where the defendant was resident in the foreign country at the commencement of the proceedings.
 - e. Where the defendant being a body corporate had its principal place of business in the foreign country and the proceedings in the foreign court were in respect of a transaction effected through that place of business.
4. A judgment creditor under a foreign judgment may apply to the High Court to have the foreign judgment registered.
5. The application for registration shall be made within six years after the date of judgment and where there has been an appeal, after the last judgment given in the proceedings.

Procedure for registration

6. This procedure is in accordance with Order 71 of the High Court Civil Procedure Rules, 2004 (CI 47).
7. An application to have a foreign judgment registered may be made by motion ex parte in the High Court and must be supported by an affidavit in which the deponent does the following:
 - a. Exhibits the foreign judgment or a verified or certified copy. Where the judgment is not in English a translation of it in English certified by a notary public or authenticated by affidavit must also be attached.
 - b. States as far as the deponent knows the name, trade, business and the last known place of abode of the judgment debtor and judgment creditor respectively.
 - c. Deposes that to the best of his belief the judgment creditor is entitled to enforce the judgment and that at the date of the application the judgment had not been satisfied.
 - d. States that at the date of the application the judgment remained enforceable by execution in the foreign country and that the registration if granted, would not be set aside under the law.
8. If the judgment debt is in foreign currency, the affidavit shall state the amount in Ghana cedis calculated at the Bank of Ghana rate of exchange at the date of the judgment. The affidavit shall be accompanied with evidence that the judgment is enforceable by execution in the foreign country and of the foreign law under which the interest became due. Upon the grant of the application for registration, the order granting leave for registration must be drawn up and served personally within the jurisdiction on the judgment debtor. The order must specify the period within which an application may be made to set aside the registration and shall contain a statement that execution on the judgment will not issue until the expiration of the time specified in the order. The registering court shall have the same control over the execution of a registered judgment as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.
9. A judgment debtor who is out of the jurisdiction must be notified of registration of the judgment. Leave of the court to serve out of the jurisdiction is not required but the rules for service out of the jurisdiction must be complied with.
10. If the foreign judgment is unregistered, it cannot be enforced in the courts in Ghana. The foreign judgment creditor would have to enforce the judgment debt by instituting a fresh suit. The plaintiff may then apply for summary judgment on the basis that the defendant has no defence to the claim.

Setting aside registration of foreign judgments

11. This is done on application and the applicant would have to prove the following:
 - a. The judgment was not registrable or was registered in contravention of the law.
 - b. The judgment was obtained by fraud.
 - c. The enforcement of the judgment in Ghana would be contrary to public policy.
 - d. The foreign court did not have jurisdiction over the defendant.
 - e. There was a breach of natural justice (the defendant was not given sufficient notice within which to defend the action).

Kenya

Introduction

1. Recognition and enforcement of foreign judgments in Kenya is governed by laws found in statutes, treaties and the common law. The application of the law depends primarily on the jurisdiction whose courts have issued the foreign judgment (original judgment or court), as well as the date of issue and subject matter of the foreign proceedings.

Statute

2. The enforcement of foreign judgments in Kenya is governed by the Foreign Judgments (Reciprocal Enforcement) Act (hereinafter, referred to as the Act); the Foreign Judgments (Reciprocal Enforcement) Rules; the Civil Procedure Act; and the Civil Procedure Rules. The Foreign Judgments (Reciprocal Enforcement) Act provides for the registration of judgments issued by designated courts in foreign countries in the High Court of Kenya and sets out the effect of such registration. Once a foreign judgment is registered it can then be enforced as a judgment of the High Court of Kenya under the Civil Procedure Act and Rules. However, the Act only applies to enforcement of judgments originating from countries outside Kenya which accord reciprocal treatment to judgments given in Kenya. These countries as listed under the Act include Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom and the Republic of Rwanda. The Act does not apply to certain judgments or orders including:

- a. Whereby a sum of money is payable or an item of movable property is deliverable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty.
- b. Judgments that are concerned with the payment of damages to the extent that they are exemplary, punitive or multiple.
- c. Judgments that are concerned with the management of the property or affairs of an incompetent person;
- d. Bankruptcy proceedings.
- e. Judgments regarding payments of money in matters of succession;
- f. Injuries, damage or death resulting from nuclear accidents.

Treaty

3. Kenya has adopted the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. This Convention applies to decisions rendered in civil or commercial matters by the courts of contracting states. The Convention does not apply to decisions the main object of which is to determine: the status or capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses; the existence or constitution of legal persons or the powers of their officers; questions of succession; questions of bankruptcy, compositions or analogous proceedings, including decisions which may result therefrom and which relate to the validity of the acts of the debtor; questions of social security; questions relating to damage or injury in nuclear matters; and decisions for the payment of any customs duty, tax or penalty.

Common law

4. Where a judgment is obtained from a non-reciprocating country for the payment of a specific sum of money, the judgment creditor may sue the judgment debtor in Kenya on that judgment and claim it as a debt pursuant to the provisions of the Civil Procedure Act; the Civil Procedure Rules and the rules of common law. Section 9 of the Civil Procedure Act provides that a foreign judgment shall be conclusive as to any matter, thereby, directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title, except where:
 - a. it has not been pronounced by a court of competent jurisdiction;
 - b. it has not been given on the merits of the case;
 - c. it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Kenya in cases in which such law is applicable;
 - d. the proceedings in which the judgment was obtained are opposed to natural justice;
 - e. it has been obtained by fraud;
 - f. it sustains a claim founded on a breach of any law in force in Kenya.
5. Therefore, if the foreign judgment from a non-reciprocating country is not in breach of any of the requirements set out in section 9 of the Civil Procedure Act then the judgment creditor may sue on the judgment and claim it as a debt from the judgment debtor in Kenya.
6. Section 4(4) of the Limitation of Actions Act requires such a suit to be brought within 12 years of the date of the judgment.

General requirements for enforcement of foreign judgments

7. The foreign judgment must be final and have no conflict with prior judgments. A foreign judgment is final for enforcement purposes even if an appeal is pending against it in the foreign jurisdiction.
8. The judgment of a foreign court that cannot be enforced by execution in that state's court cannot be enforced by a Kenyan court.
9. The foreign court must have had jurisdiction over the defendant. Jurisdiction is confirmed if the cause of action arose within the jurisdiction of the foreign court, if the defendant voluntarily submitted to the court's jurisdiction or if he resided there or had a place of business there, or where the matter is contractual the contract was substantially performed in the country of that court.
10. The defendant must have been given notice of the court proceedings against him in conformity with the rules of natural justice and due process of law. Notice should be given in conformity with the laws of that foreign court.
11. The foreign judgment must not be contrary to Kenyan public policy. Anything inconsistent with the Kenyan domestic laws, morality and sense of justice or national interests will be deemed contrary to Kenyan public policy.
12. The foreign judgment is only enforceable within six years of the date of judgment or six years after the last judgment where there may have been appeals from the original judgment.

Procedure for enforcement of foreign judgments

13. Enforcement of a foreign judgment from designated countries where there is a reciprocating enforcement mechanism is by filing of a formal application in the High Court in a prescribed form. The motion is to be accompanied by an affidavit confirming that the judgment has not been satisfied and a certified copy of the judgment must be exhibited. A certificate under the seal of the foreign judge certifying the status of the court may be required.
14. For enforcement of a foreign judgment from a non-designated country, a party must file a plaint at the High Court of Kenya providing a concise statement of the nature of the claim, claiming the amount of the judgment debt, supported by a verifying affidavit, list of witnesses and bundle of documents intended to be relied upon. A certified copy of the foreign judgment should be exhibited to the plaint.
15. A foreign judgment must be authenticated by a competent authority in its country of origin. If the judgment is in a language other than English, it is required to be translated into English by a sworn translator or by any other person so authorised in either state.

Documentary requirements

16. In the absence of any special treaty with a particular country, the documentary requirements for enforcement in addition to the certified copy of the judgment, i.e. power of attorney, affidavit, etc. are:
 - a. Section 5(4)(a) of the Act requires the applicant seeking to enforce the foreign judgment to file a certificate signed and sealed by the foreign court, setting out the details of the parties; the dates on which suit was filed; whether the defendant was served; whether the defendant entered appearance and filed a defence and the particulars of the judgment.
 - b. Section 5(4)(c) requires the applicant to file an affidavit stating that the judgment has not been satisfied; that the judgment is enforceable in the foreign country and, where applicable, the parts of the judgment that the applicant seeks to enforce.
17. Where the plaintiff is a company authorisation is proved by a Board Resolution.
18. Under section 5(4)(a) of the Act the application/affidavit should state that the fact that a foreign judgment is appealable does not prevent the judgment creditor from applying to enforce the judgment in Kenya. The Act requires foreign judgments to be final and conclusive; however, the proviso to section 3(2) of the Act states:

‘But a judgment is deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.’
19. Section 11 of the Act also allows a judgment debtor to apply to set aside the registration of the foreign judgment on grounds that an appeal is pending or that the judgment debtor is entitled to and intends to appeal the judgment.
20. If the documents are not originals, they must be certified by a notary public or the registrar of the original court.

Authentication of documents

21. The copy of the foreign judgment must be certified by the registrar of the issuing court. Affidavits in support of the application for registration of the foreign judgment must be sworn before a notary public in the foreign country. An apostille is not necessary.

Translation of documents

22. English is recognised without the necessity for translation.
23. Section 5(4)(b) of the Foreign Judgments (Reciprocal Enforcement) Act requires translations to be certified by a notary public of the foreign country or the registrar of the original court. It is not necessary to have an apostille.

Reopening or review of judgments

24. The Kenyan court would not have any power to review the foreign judgment if all formalities have been complied with and if the judgment meets local requirements.
25. An allegation of fraud can only be raised in respect of the manner in which the judgment was obtained. Section 10 of the Act sets out the grounds for an application by the judgment debtor to set aside the registration of a foreign judgment in Kenya. Section 10(2) provides that a registered judgment may be set aside if the judgment was obtained by fraud, other than fraud which was, or could have been, put in issue by the judgment debtor in the proceedings in the original court or on appeal.

Pending procedure

26. Section 6 of the Civil Procedure Act prohibits a Kenyan court from proceeding with the trial of any suit or proceeding in which the matter at issue is also directly and substantially at issue in a previously instituted suit or proceeding. Therefore, the Kenyan court would stay either the pending cases or the application to register. A pending appeal does not prevent the plaintiff from applying to enforce the foreign judgment pursuant to the proviso to section 3(2) of the Act. Applications for recognition are usually made ex parte unless the court directs otherwise. This means that the judgment debtor will usually be involved at the enforcement stage after recognition has been granted by the court. At that stage the judgment debtor may apply to have the recognition set aside on the grounds that there is a pending appeal in the foreign court under section 11(1)(a) of the Act. In such a case the debtor would have to satisfy the court that the appeal in the foreign court has good prospects of success that will lead to the judgment being varied or set aside.

Defences

27. Under section 5(2) of the Act the application for enforcement of a foreign judgment in Kenya is made ex parte where the court is satisfied that the defendant/judgment debtor was personally served with the court papers in the original suit or entered appearance in that suit and the time for filing an appeal in the original country has lapsed. In a case where the application is ex parte there are no defences to an application for registration and enforcement of a foreign judgment.

- 28.** Rule 2(2) of the Foreign Judgments (Reciprocal Enforcement) Rules made under the Act gives the court discretion to order the applicant to serve the court papers on the judgment debtor so that the application for registration will be heard *inter partes*.
- 29.** However, under section 10(2) of the Act the judgment debtor may apply to set aside the registration of a foreign judgment on the following grounds:
- The judgment does not fall within the categories set out in section 3(2) of the Act.
 - The registration of the judgment was in contravention of the provisions of the Act.
 - The court issuing the judgment did not have jurisdiction.
 - The judgment debtor did not appear in the proceedings in the foreign court.
 - The subject matter of the judgment had already been conclusively determined by a court in the foreign country or in Kenya.
 - The judgment debtor was not duly served with the court papers in the original proceedings; did not receive sufficient notice to defend the proceedings; or did not appear in the proceedings or only appeared to contest the jurisdiction of the court.
 - The judgment was obtained by fraud.
 - The judgment has been reversed or set aside pursuant to an appeal to a court in the foreign country.
 - The judgment debtor has diplomatic immunity in Kenya.
 - The rights under the judgment are not vested in the applicant for enforcement of the judgment.
 - The enforcement of the judgment would be manifestly contrary to public policy.

Jurisdiction

- 30.** Kenyan courts will not automatically accept that a foreign court had jurisdiction to issue the judgment. Section 4(2) of the Act provides that a court shall not be treated as having had jurisdiction under subsection 1 where:
- Under the rules of private international law of Kenya the exclusive jurisdiction over the subject matter of the proceedings is vested in the courts of another country.
 - The judgment debtor only appeared in the foreign proceedings to contest jurisdiction; to request the foreign court not to exercise its jurisdiction; or to protect or obtain release of property that has been seized or threatened with seizure.
 - The judgment debtor was entitled to immunity from the jurisdiction of the foreign court under the rules of public international law and did not appear in the foreign proceedings except to contest jurisdiction.
- 31.** The Kenyan courts will apply Kenyan law to determine the question of jurisdiction.
- 32.** The Kenyan courts require the plaintiff to show that the defendant submitted to the jurisdiction of the foreign court in order to enforce the foreign judgment
- 33.** The Kenyan courts do not require residence/citizenship/property ownership or domicile in the foreign country on the part of the party against whom judgment was granted.
- 34.** The entry of an appearance does not prevent the defendant from subsequently repudiating the jurisdiction of the foreign court in proceedings before the Kenyan court where jurisdiction was contested in the foreign court.

35. The entry of an appearance prevents the defendant from subsequently repudiating the jurisdiction of the foreign court in proceedings before the Kenyan court where jurisdiction was not contested in the foreign court.
36. A foreign judgment granted by default is not treated differently from any other kind of judgment, provided the court is satisfied that the defendant was duly served; was granted sufficient time to defend the proceedings and submitted to the jurisdiction of the foreign court pursuant to section 10(2)(g) of the Act.
37. The Kenyan court cannot decide to review the judgment where the foreign court accepted a clause conferring exclusive jurisdiction on the foreign court.
38. The respondent does not have to be a citizen/resident, own assets, or carry on business in Kenya for the application for enforcement of the foreign judgment to be made.

Contractual waiver

39. A prior contractual waiver of service or notice would not be recognised by the Kenyan courts.
40. The Kenyan courts would not enforce a foreign judgment although it was granted after a contractual waiver of procedural requirements usually imposed by the Kenyan courts.

Service requirements

41. The Kenyan courts will usually accept the method of service recognised by the foreign court, even if it is not a method which would be recognised in respect of a locally initiated action. However, the certificate to be issued by the foreign court pursuant to section 5(4) of the Act dictates the mode of service used.

Cession

42. There is no authority on this point but there is a strong argument under section 10(2)(m) that a lawful and proper assignee could apply.
43. Cession or assignment would not confer any advantages in the proceedings before the Kenyan court.

Interim relief

44. The Kenyan court would not grant any interim relief at the time of filing the application.

Time of enforcement and subsequent action

45. The estimated time period from the date of filing of the application until the date of the enforcement of the foreign judgment is as follows:
 - a. If unopposed – one to two months.
 - b. If opposed – six to twelve months.
46. Where the judgment is enforced by the local court, it is enforceable in the following ways, among others:
 - a. Attachment of property – movable and immovable: By way of execution proceedings under the Civil Procedure Rules.
 - b. Bankruptcy/liquidation: Under the Insolvency Act.
47. In addition to the above reliefs, one may apply for garnishee orders to attach debts due to the judgment debtor from any other person. Attachment of salary and appointment of a receiver is also possible.

- 48.** In the event of an appeal from a decision granting or refusing to grant enforcement:
- There is no automatic right of appeal. A party must seek leave to appeal from either the High Court or the Court of Appeal. The courts will usually grant leave to appeal.
 - An appeal may take about one year.
 - There is no automatic suspension of execution in the case of an appeal. The judgment debtor must file an application for stay of execution pending appeal. The judgment debtor must demonstrate that the appeal has reasonable prospects of success and there will be irreparable harm if the order is not granted in order for the court to grant the stay of execution pending appeal.

Expenses, legal fees and security for costs

- 49.** The court fees charged for the filing of the application for recognition of the foreign judgment are assessed by the court and are usually determined by the value of the subject matter.
- 50.** The fees payable to the lawyers acting for the parties are prescribed by the Advocates (Remuneration) Order. This takes into account the value of the subject matter, the complexity of the case and the time spent by the advocate.
- 51.** The Advocates Act (Cap 16 Laws of Kenya) expressly prohibits contingency agreements.
- 52.** The judgment creditor would be able to recover approximately half to two-thirds of the costs incurred from the judgment debtor, provided the judgment debtor has means and assets to satisfy the award of costs.
- 53.** The applicant does not need to give security for costs if the application is heard *ex parte*. Where the application is heard *inter partes* and the applicant is a foreigner with no assets in Kenya the applicant may be required to provide security for costs.

Required affidavit

- 54.** The Oaths and Statutory Declarations Act and the Civil Procedure Rules require the maker of the affidavit to set out their name, residential and postal addresses, their designation, if they are an officer of a company and the fact that the statements in their affidavit are within their own knowledge – if not they are required to state the source of the information.
- 55.** Rule 3 of the Foreign Judgments (Reciprocal Enforcement) Rules sets out the specific requirements for an affidavit in support of an application for registration and enforcement of a foreign judgment as follows:
- The affidavit must exhibit the certificate issued by the court in the foreign judgment.
 - The affidavit must also exhibit a certified copy of the foreign judgment and if it is not in English a certified translation.
 - Set out the names, addresses, residences and places of business of the judgment creditor and judgment debtor.
 - Set out the nature of the judgment and the category under which it falls with respect to section 3(2).
 - Specify the interest that has become due under the judgment up to the time of registration.

New action instead of enforcement

56. Under section 7 of the Civil Procedure Act a new action cannot be instituted if a judgment has been issued by a competent court in a matter between the same parties litigating over the same issues. However, if the foreign judgment is for the payment of a specified amount of money and is issued by a country to which the Act does not apply (non-reciprocating country) the judgment creditor may sue the judgment debtor in Kenya on that judgment and claim it as a debt.
57. Under section 4(4) of the Limitations of Actions Act (Cap 22 Laws of Kenya) a claim based on a judgment (issued by a non-reciprocating country) must be filed within 12 years of the date of the judgment. However, interest on such judgment does not accrue after the expiry of six years from the date of the judgment.

Prescription

58. Under section 5(1) of the Act an application for recognition and enforcement of a foreign judgment must be made within six years of the date of the judgment.

Security for costs

59. Kenyan courts may order a foreign plaintiff to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.

Nigeria

1. There is a general proposition that the powers of the courts are limited by their territorial boundaries (i.e. territorial jurisdiction). Thus, a judgment pronounced by the court of one jurisdiction should ordinarily have no force or effect beyond its own territory save for situations where other jurisdictions have agreed to allow for such judgment to be enforced within their own territories. However, such judgment may become enforceable in another country if the judgment is registered and recognised in the country where it is sought to be recognised.
2. In Nigeria, foreign judgments are enforceable under the following legal regimes:
 - a. Reciprocal Enforcement of Foreign Judgments Ordinance, Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 (the 1922 Ordinance) (this Ordinance was enacted in 1922 as L.N. 8, 1922).⁷
 - b. Common law action.

Enforcement of foreign judgments under the 1922 Ordinance

3. The Ordinance was enacted to facilitate the reciprocal enforcement of judgments obtained in Nigeria and in the United Kingdom, and other parts of Her Majesty's Dominions and Territories under Her Majesty's protection.⁸

4. The judgment registrable under this Ordinance must be a monetary judgment, final and conclusive between the parties.

Procedure

5. The application shall be by originating motion or petition brought pursuant to the Reciprocal Enforcement of Judgment Ordinance, 1922 (the Ordinance) and praying the court for leave to register the foreign judgment.
6. The application shall be accompanied by an affidavit which shall state that the judgment does not fall within the cases in which it may be set aside under Section 3 (2) of the Ordinance.
7. The affidavit shall also give the full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and judgment debtor. A certified true copy of the judgment shall be exhibited.
8. The petition or motion may be brought ex parte or on notice. If the applicant files a petition or motion ex parte, the judge may direct that notice of the application be served on the judgment debtor. The petition or motion should be supported by an affidavit of facts exhibiting the judgment or a verified or certified, or otherwise duly authenticated, copy and also a written address.

⁷ There is the Foreign Judgments (Reciprocal Enforcement) Act, Cap 152, Laws of the Federation of Nigeria, 2004 (enacted in 1961 as L.N. 56, 1961) which is yet to have effect and force of law in the absence of the declaration by the Attorney General of the Federation under section 3 of the Act.

⁸ By various proclamations, the Ordinance was extended to judgments of various territories and dominions under Her Majesty's protection, including the Supreme Court of the Gold Coast Colony, Colony and Protectorate of Sierra Leone, Courts of the Chief Commissioners of Ashanti and of the Northern Territories of the Gold Coast, Supreme Court of the Colony of the Gambia, Supreme Court of the State of Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Island, St. Lucia, St. Vincent, and Trinidad and Tobago.

9. Where leave is granted, the order should be served on the judgment debtor. The order should specify the time limit within which the judgment debtor can apply to set aside the registration.
10. Such time shall be 14 days if the judgment debtor is resident within the jurisdiction of the court and when the judgment debtor is resident outside the jurisdiction of court, the time to be given to the judgment debtor to apply to set aside the registration shall be determined by the distance between the judgment debtor's residence and the jurisdiction of the court. The register of judgments registered under the Ordinance shall be kept in the High Court Registry under the direction of the Chief Registrar.

Grounds for challenging enforcement under the Ordinance

11. A judgment shall not be registered under the 1922 Ordinance if:
 - a. the original court acted without jurisdiction;
 - b. the judgment debtor being the defendant in the proceedings was not duly served with the process of the original court, and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
 - c. the judgment was obtained by fraud;
 - d. the judgment debtor satisfied the court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment;
 - e. the enforcement of the judgment would be contrary to public policy.

Enforcement by action at common law

12. The expedited process of enforcement under the Ordinance is not available for judgments from countries not listed in the 1922 Ordinance. A person seeking to enforce judgments from any country other than the United Kingdom and those countries listed in the Schedule to the Ordinance has to commence a new action to enforce the judgment by filing a new writ of summons (or Originating Summons) to enforce the judgment.
13. The judgment debtor is then given a wider berth in defending the enforcement as such a person can raise new defences (not affected by issue estoppel) or reopen defences which were denied or discountenanced in the foreign suit (which might not be successful on the basis of *res judicata*).
14. Also, the rules of various federal and state courts in Nigeria permit a judgment creditor to bring an application for summary judgment on the ground that the judgment debtor has no defence to the new suit based on the foreign judgment.

Conclusion

15. There are two applicable regimes for enforcement of foreign judgments in Nigeria (the expedited registration process and the action on the foreign judgment by writ), the application of which is dependent on the country in which the foreign judgment was made.

Sierra Leone

The law

1. Cap 21 of the Laws of Sierra Leone 1960 makes provision for the enforcement in Sierra Leone of judgments given in foreign countries which give reciprocal treatment to judgments given in Sierra Leone for facilitating the enforcement in foreign countries of judgments given in Sierra Leone. The Act is cited as the Foreign Judgments (Reciprocal Enforcement) Ordinance and it is the law that for enforcement of foreign judgments the same must be registered in Sierra Leone. Foreign judgments are not automatically recognised and enforced in Sierra Leone. The President of Sierra Leone orders that the judgment of the courts of countries with which Sierra Leone has reciprocal agreements shall be enforced in Sierra Leone. Sierra Leone has a statutory instrument/subsidiary legislation showing reciprocity with countries with which it has agreement for reciprocity, because Sierra Leone will need to confirm its judgments will be recognised in those other countries with which we have reciprocity.
2. The judgment sought to be enforced must be a final and conclusive judgment even if an appeal may be pending against it or even if it may still be subject to appeal in the courts of the country of the original court.

Procedures for registration of foreign judgments

3. The procedures for registration of foreign judgments in Sierra Leone are provided by Order 45 of the High Court Rules of Sierra Leone, 2007, which recognises Cap 21 of the Laws of Sierra Leone 1960. For registration of foreign judgments, a judgment creditor (the person in whose favour the judgment was given, including any person in whom the rights under the judgment become vested by succession or assignment or otherwise) may apply by way of an originating summons ex parte to the High Court at any time within six years after the date of the judgment, or where there have been proceedings by way of an appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court.
4. The application must be supported by an affidavit of the fact, exhibiting the judgment or a certified copy thereof, stating that the deponent believes the judgment creditor is entitled to enforce the judgment and that there is no reason why the judgment cannot properly be ordered to be registered. Subject to proof of the prescribed matters, the court will order the said foreign judgment to be registered. Notice in writing of the registration of the judgment, together with the order granting leave to register the judgment, must be served on the judgment debtor personally within seven days after registration or as may be directed by a judge.

5. Such foreign judgment shall, however, not be registered if at the date of the application for its registration, it has been wholly satisfied or if it could not be enforced by execution in the country of the original court. Where the judgment of the original court has been partly satisfied, the judgment shall be registered in respect of the balance remaining payable at the date of registration.
 - d. that the enforcement of the judgment would be contrary to public policy in the country of the registering court;
 - e. that the rights under the judgment are not vested in the person by whom the application for registration was made; or
 - f. that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

Setting aside of foreign registered judgments

6. The judgment debtor may at any time within the time limited by the order giving leave to register after service on him of the notice of registration of the judgment apply by summons to a judge to set aside the registration or to suspend execution of the judgment where such judgment has been wholly satisfied or where the said judgment could not be enforced by execution in the country of the original court. A foreign registered judgment may also be set aside upon an application made in that behalf by any party against whom a registered judgment may be enforced if the court is satisfied:
 - a. that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
 - b. that the judgment debtor did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
 - c. that the judgment was obtained by fraud;
7. The High Court of Sierra Leone has powers, on an application made before it, to set aside registration of a foreign judgment, on such terms as it thinks fit, if the applicant satisfies the court that an appeal is pending or that it is entitled and intends to appeal against the judgment. The court may also adjourn the application to set aside the registration until the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal. A subsequent application for registration may be entertained by the High Court of Sierra Leone when the appeal has been disposed of or if the judgment becomes enforceable by execution in the country of the original court.
8. Registration of a foreign judgment may also be set aside in circumstances where the judgment was registered for the whole sum when in fact part of the judgment debt may have been satisfied but the registering court may, where part of a judgment debt has been satisfied, order judgment to be registered for the balance remaining payable at the time of registration.

Enforcement of judgments and orders including foreign judgments

9. For the purposes of enforcement, a registered judgment carries the same force and effect and the registering court, the Sierra Leone court, will have the same control over the execution of a registered foreign judgment as if the judgment had been a judgment originally given by the Sierra Leone court and entered on the date of registration. Order 46 of the High Court Rules of Sierra Leone, 2007 provides for enforcement of judgments and orders and this will include registered foreign judgments and execution would include any of the following:
 - a. writ of fieri facias;
 - b. garnishee proceedings;
 - c. the appointment of a receiver;
 - d. a writ of sequestration.
10. The above processes must be issued with the leave of the court in compliance with provisions of the Rules as provided, generally, by Order 47 and an issue of a writ of execution takes place on it being sealed by an officer of the appropriate office and only after a praecipe, for its issue would have been filed, signed by or on behalf of the solicitor of the person entitled to execution, or if that person is acting in person, by him.
11. Where a writ of fieri facias is issued, it is executed by the seizure and sale of the debtor's property, sufficient to satisfy the amount of the judgment debt together with post-judgment interest at the appropriate rate until payment and the costs of the execution.
12. The court may also, upon an application made ex parte on behalf of a person entitled to enforce a judgment, order for the examination of a judgment debtor by oral examination as to the debtor's means of satisfying the debt, after which garnishee proceedings may follow, unless the court directs otherwise.
13. Where a foreign judgment which is to be registered provides for foreign currency, that same foreign currency will be converted to the Leones prevailing rate at the date of the judgment of the original court and the said judgment registered as if it were a judgment for such sum in the currency of Sierra Leone.

Uganda

Enforcement of foreign judgments in Uganda

Legal framework

Enforcement of foreign judgments is largely governed by the following:

- a. Civil Procedure Act Cap 71
- b. Foreign Judgments (Reciprocal Enforcement Act) Cap 9
- c. The Judgment Extension Act Cap 12
- d. The Reciprocal Enforcement Of Judgment Act Cap 21

Civil Procedure Act Cap 71

1. This Act provides for foreign judgments. Section 9:
 - a. "That a judgment shall be conclusive as to any matter directly adjudicated, upon by it between the same parties or between parties under whom they or any of them claim, litigating under the same title."
2. Foreign judgments may be impeached:
 - a. Where the court pronouncing it is not competent.
 - b. Where the case has not been heard on its merits.
 - c. Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of Uganda in cases in which the law is applicable.
 - d. Where the proceedings in which the judgment was obtained were opposed to natural justice.
 - e. Where it has been obtained by fraud.
 - f. Where it sustains a claim founded on a breach of any law in force in Uganda.

3. In the absence of the foregoing the court presumes that the foreign judgment was pronounced by a court of competent jurisdiction, as long as the document produced is a certified copy of the foreign judgment.
4. The presumption can however be displaced if it is shown that the court lacked jurisdiction.

Foreign Judgments (Reciprocal Enforcement) Act Cap 9

5. This Act provides for the enforcement in Uganda of judgments that have been given in foreign countries.
6. This however applies to judgments from countries which also reciprocate in the same manner to judgments given in Uganda. The limitation here is that it will not handle matters connected to bankruptcy and winding up of companies.
7. Judgments out of commercial and contractual relations form the biggest number.
8. Only foreign judgments which are final and conclusive between the parties with a money judgment but with exceptions to judgments concerning taxes, fines or other penalties shall be enforced.

While it is incumbent that reciprocity must exist before foreign judgments are enforced, the Ugandan courts have however come up with an exception because of the theory of obligation and reciprocity and the theory of comity. See *Christopher Sales & Carol Sales vs Attorney General Civil Suit No 91 of 2011*(unreported).⁹

9. Comity is seen between countries that believe in maintaining amicable working relationships and maintenance of good neighbourliness and respect for the judicial brethren across the globe.
10. Under the Foreign Judgment (Reciprocal Enforcement) Act, a foreign judgment cannot be enforced unless there is a reciprocal agreement and registration of that judgment has taken place.

Procedure

11. The judgment creditor applies to have the judgment registered in the High Court and on proof of its authenticity shall proceed to register the judgment. It shall, however, not do so if at the date of the application:
 - a. It has been wholly satisfied.
 - b. It could not be enforced by execution of the country of the original court.

Once registered it shall have the same force and effect. It will carry interest and be enforced by execution as if it has originated in the High Court of Uganda.

The Judgment Extension Act Cap 12

12. The Act simply brought on board three countries, whose judgments could be enforced.

These were Malawi, Kenya and Tanzania.

13. The Act recognises decrees obtained from the Supreme Court of Kenya, the High Court of Malawi and Tanzania, and all the decisions from their respective subordinate courts, when it comes to enforcement.
14. The decrees from the courts mentioned are treated in the same way as a decree from a Ugandan court.
15. It was left open for the Minister in Uganda to add other countries to the list.
16. An advantage here is that one does not need to go through the laborious proceedings of enactment in Parliament.
17. There is a further advantage to commerce since it takes lesser time to extend the same to other countries.

⁹ The English courts have said that foreign judgments should be enforced because they impose a duty or obligation . In *Goddard v Gray* (1870) LR 6 QB 139 thus;

"It is not an admitted principle of the law of nations that a state is bound to enforce within its territories the judgment of a foreign tribunal. Several of the continental nations including France do not enforce judgment of other countries unless there are reciprocal treaties to that effect. But in England and in states which are governed by common law, such judgments are enforced, not by virtue of treaty, nor by virtue of any statute but upon a principle well stated by Parke B: where a court of competent jurisdiction had adjudicated a certain sum to be due from one person to another a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be maintained...." See also case of *Christopher Sales & Carol Sales vs Attorney General cs 91 of 2011*

The Reciprocal Enforcement Of Judgments Act Cap 21

18. This applies to Ireland judgments made in the United Kingdom and other Commonwealth Countries. Section 2 of the Reciprocal Enforcement of Judgments Act provides:
 - a. "Where a judgment has been obtained in a superior court in the United Kingdom or the Republic of Ireland, the judgment creditor may apply to the High Court, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Uganda and subject to this section, order the judgment to be registered.)"
19. The application to register the judgment must, however, be made within 12 months from date of judgment.
20. Enforcement after 12 months is also possible but with leave of court.
21. The application to register must be accompanied with a certified copy of the judgment intended to be enforced.
22. Note that this Act is limited to the United Kingdom, Ireland and those Commonwealth countries reciprocal to Uganda by minister's statutory order in contrast with the wide coverage of the New York Convention and International Centre for Settlement of Investment Dispute Convention (ICSID).

Procedure

23. The judgment creditor applies to the High Court. This application must be within 12 months, though a longer period may be allowed by the court.
24. The judgment creditor applies for registration of the judgment.
25. If the court thinks it is just and convenient to enforce the judgment in Uganda, it will order its registration.

Effect of registration

26. The judgment will be of the same force and effect as if it had been a judgment originally obtained or entered upon the date of registration in Uganda.
27. The court in Uganda shall handle the execution like any other judgment.
28. All costs pertaining to the transfer and registration shall be recovered from the proceeds of that execution.
29. Before enforcement, the Ugandan court shall ensure that notice of registration shall be satisfied that notice of enforcement was served on the judgment debtor with time that enables the judgment debtor to apply to set aside the registration if need be.
30. Where the judgment creditor is a Ugandan who has obtained judgment in Uganda but wishes to enforce that judgment outside Uganda, the Ugandan court will give him a certified copy of that judgment.

East African Community Treaty

- 31.** Article 32 provides for arbitration clauses and special agreements. It reads:
- a. The court shall have jurisdiction to hear and determine any matter.
 - b. Arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the court.
- 32.** Execution is provided for in Article 44:
- a. "The execution of a judgment of the court which imposes a pecuniary obligation on a person shall be governed by the rules of Civil Procedure in force in the Partner state in which execution is to take place."
- 33.** The order for execution shall be appended to the judgment of the court which shall require only the verification of the authenticity of the judgment by the registrar, whereupon the party in whose favour execution is to take place may proceed to execute the judgment.
- 34.** The foregoing on one view makes it easier to enforce the judgment than under the other Acts for enforcement of foreign judgments.
- 35.** The limitation though is that it applies to only partner states of East Africa.



A grayscale topographic map of the Americas and Caribbean region. The map shows the rugged terrain of North America, including the Rocky Mountains and the Appalachian range, and the more varied landscapes of Central and South America. The Caribbean Sea and surrounding islands are visible to the east. A dark purple rectangular box is positioned in the lower-left quadrant, containing the title text in white.

The Americas and Caribbean

Bermuda

1. Foreign judgments for money are enforceable in Bermuda under the common law. In this context Bermuda courts follow English common law relating to the enforcement of foreign judgments.
2. A foreign judgment is not directly enforceable in Bermuda. A foreign judgment, in order for it to be enforceable, has to be converted into a judgment of the Bermuda court.
3. A final judgment in personam given by a court of a foreign country with jurisdiction to give it may be enforced by an action for the amount due under it if it is for a debt or a definite sum of money (not being a sum payable in respect of taxes or in respect of a fine or other penalty) (*Nassau Insurance Company v. Ardra Insurance Company Ltd* (1997) Bda LR 36).
4. A foreign judgment may be enforced in Bermuda if the foreign court had jurisdiction, in the international sense, over the defendant in the foreign proceedings. A Bermuda court will recognise that the foreign court had jurisdiction, in the relevant sense, over the defendant in the following circumstances:
 - a. If the defendant against whom the foreign judgment was given was, at the time the proceedings were instituted, present in the foreign country.
 - b. If the defendant against whom the foreign judgment was given submitted to the jurisdiction of the foreign court by counterclaiming in the foreign proceedings.
 - c. If the defendant against whom the foreign judgment was given submitted to the jurisdiction of the foreign court by voluntarily appearing in the foreign proceedings.
 - d. If the defendant against whom the foreign judgment was given had agreed, prior to the commencement of foreign proceedings, to submit to the jurisdiction of the foreign court.
5. The only grounds for resisting the enforcement of such a judgment at common law are:
 - a. The foreign court lacked jurisdiction over the defendant, according to the view of the Bermuda law.
 - b. The foreign judgment was obtained by fraud.
 - c. The enforcement of the foreign judgment would be contrary to public policy.
 - d. The proceedings in which the foreign judgment was obtained were contrary to natural justice (or the English idea of "substantial justice").
6. Unless the judgment can be impeached on one of the four grounds above, the Bermuda court asked to enforce it will not conduct a rehearing of the foreign judgment or look behind it in any way. A foreign judgment which is final and conclusive on the merits, which cannot be impeached on one of the four grounds above, is conclusive on the merits and cannot be impeached for any error either of fact or of law. In the ordinary course a Bermuda court will give summary judgment, reflecting the judgment of the foreign court, without the necessity of a trial. In this context a foreign judgment may be final even if it is subject to an appeal.

7. The Bermuda court will not enforce a judgment in respect of taxes, fines or penalties. Under the Protection of Trading Interests Act 1981, no court in Bermuda will entertain proceedings at common law, for the recovery of any sum payable under such foreign judgment, if it is a judgment for multiple damages. A judgment for multiple damages means a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the person in whose favour the judgment was given.
8. If the claim on the foreign judgment is brought in the Supreme Court of Bermuda and is successful in the Supreme Court, the person who obtained a foreign judgment will then have the benefit of a judgment of the Supreme Court. The person who obtained the foreign judgment will then be entitled, if necessary, to use the enforcement procedures of the Bermuda courts to enforce judgment of the Supreme Court.
9. The enforcement procedures of the Supreme Court include:
 - a. orders requiring judgment debtors to provide information about their assets;
 - b. garnishee proceedings, requiring third parties who are indebted to the judgment debtor to pay the sum owed to it to the judgment creditor;
 - c. charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - d. orders appointing enforcement officers to seize and sell the judgment debtor's goods;
 - e. orders appointing receivers;
 - f. orders relating to insolvency procedures.

Outline of procedural steps

10. In order to enforce in the Supreme Court of Bermuda:
 - a. Proceedings for the enforcement of a foreign judgment in Bermuda are commenced by the judgment creditor issuing a writ endorsed with a statement of claim reciting the amount of the judgment debt.
 - b. The Bermuda court will have the necessary jurisdiction to enforce a foreign judgment. The jurisdiction is provided by Order 11, rule 1 (m) of the rules of the Supreme Court of Bermuda 1985, which allows the Bermuda court to give leave to serve Bermuda proceedings on a judgment debtor outside the jurisdiction of Bermuda if the claim is brought to enforce the foreign judgment.
 - c. Applications seeking enforcement of a foreign judgment must be supported by an affidavit which must exhibit a certified or otherwise properly verified copy of the foreign judgment.
 - d. Upon service of the writ seeking enforcement of the foreign judgment, the judgment debtor would ordinarily have 14 days to acknowledge service and a further 14 days in which to file a defence seeking to impeach the foreign judgment.
 - e. If the judgment debtor fails to enter an appearance within the time stipulated the judgment creditor may enter a default judgment in the Supreme Court.

- f. If the judgment debtor elects to enter an appearance the judgment creditor, in the ordinary case, will proceed to make an application for a summary judgment on the basis that there are no arguable grounds impeaching the foreign judgment. Applications for summary judgment are dealt with without the need for oral evidence. In the ordinary case a summary judgment, seeking the enforcement of foreign judgment, can be obtained in the Supreme Court of Bermuda within a period of six weeks from the commencement of the Bermuda proceedings.

Brazil

Homologation of foreign judgment in Brazil

1. The Brazilian Constitution established in its article 105, I, i, the competence of the Superior Court of Justice (STJ) to homologate foreign judgments. Homologation is a necessary procedure so that a judgment can be enforced in the territory under the Brazilian law.
2. According to article 961 of the Civil Procedure Code (CPC), a foreign decision will only take effect in Brazil after this ratification.

How to apply

3. The homologation procedure is established in articles 216-A to 216-X of the STJ Internal Regulation (RISTJ), presented by the Regimental Amendment 18.
4. A homologation action is proposed through an electronic petition signed by a lawyer and addressed to the President of the Superior Court of Justice (STJ).
5. The requirements for homologation of a foreign sentence are provided in article 961 of the CPC and in articles 216-C and 216-D of the STJ Internal Regulation. These provide as follows:

“Article 961. The foreign judgement will only be enforced in Brazil after homologation, unless otherwise stated by a law or treaty.

First paragraph. The final judicial decision, as well as the non-judicial decision that, under Brazilian law, would have jurisdictional nature, can be homologated.

Second paragraph. The foreign judgement can be partially homologated.

Third paragraph. The Brazilian judicial authority may grant urgent requests and enforce provisional execution during the homologation procedure.

“Article 216-C. The homologation of foreign judgements will be proposed by the requesting party, and the initial petition must contain the requirements fixed in the procedure code, as well as those in the article 216-D, and must be accompanied by the original or the certified copy of the foreign judgement and other indispensable documents, duly translated by an official or ad hoc translator and certified by the Brazilian consular authority, when applicable.”

“Art. 216-D. The foreign judgement must:

- a. have been given by a competent authority;
 - b. contain elements that prove that the parties were regularly cited or have a certified default judgement;
 - c. be final.”
6. The plaintiff can present another party's assent with the initial petition to speed up the process, so the court can dispense the citation of the adverse party. If the adverse party's assent is not provided in this stage, the President of the STJ will issue citation by rogatory letter (if a party to be cited does not reside abroad) or by letter of order (if it does reside in Brazil) to respond to the action.

Citation by rogatory letter

7. In this case, the author will be notified to translate the rogatory letter (which is prepared by the Coordination of the Special Court of the STJ) and any other documents needed for the action.
8. The rogatory letter can be accessed via the process visualization system in the STJ website, and is also available to the parties, physically, at the Coordination of the Special Court.
9. The translation must be done by an official translator certified by the Brazilian Commercial Boards. If the interested party does not find a professional for the desired language, it can request the Board to appoint an ad hoc translator exclusively for that act. The documents necessary for the instruction of the rogatory letter are listed in article 260 of the CPC and, depending on the country, in international agreements. The general rules on the transmission of rogatory letters are set out in Interministerial Ordinance 501/2012.
10. There are no costs in Brazil for the issuance of the rogatory letter, but the procedure may generate some fees in the foreign countries, in which case the author must indicate a local resident who is responsible for the payment.
11. If the author is a beneficiary of free justice, the translation may be provided by the Special Court Coordinator. Even so, the author is free to pay for the translation if he does not want to wait for the administrative procedures necessary to hire a translator.
12. All translated documentation must be delivered on paper to the Special Court Coordination, in person or by post, in two copies (three, if it is going to the United States).
13. Upon receipt of the translations, the rogatory letter is sent to the Brazilian Ministry of Justice for dispatch to the requesting country. After the fulfillment of the rogatory letter abroad, it is returned to the Superior Court of Justice through the referred Ministry. After receiving the letter, the party will be notified, after dispatch from the President of STJ, to arrange the translation of the documents received by the requesting country containing the information about the enforcement or not in the foreign country.

Enforcement of the homologated judgment

14. According to article 965 of the CPC, the enforcement of the judgment homologated by the Superior Court of Justice (STJ) will be carried out by the first-degree federal courts.
15. After the rogatory letter is returned to STJ, the foreign judgment acquires the same validity as a national judgment and is enforced by the common procedure fixed by the Brazilian Code of Civil Procedure.
16. Once the enforcement request is filed by the creditor, the debtor is cited to pay. If payment is not made within the fixed period, the creditor is entitled to appoint the debtor's assets to be constrained for payment purposes. After the constriction and evaluation of the attached assets, the debtor is again served to file an opposition, if desired, which does not affect the course of the enforcement proceedings unless the judge determines otherwise. If the defendant again does not pay the debt, the constrained assets shall be evaluated and sold in a public auction and the values are reverted to pay the creditor.

Canada

1. Foreign judgments may be enforced if the foreign court had jurisdiction to hear the claim.
2. Foreign judgments may be recognised and enforced where the foreign court properly assumed jurisdiction over the claim, namely, where there is a real and substantial connection between the foreign jurisdiction and the cause of action.¹⁰
3. The real and substantial connection test arose in the context of money judgments, and now applies to non-money judgments that are sufficiently final and clear.¹¹
4. In 1990, the Supreme Court of Canada in *Morguard* developed the real and substantial connection test to enforce money judgments between Canadian provinces and territories.¹² In that same decision the Court moved away from the UK approach, where the four *Dicey* Rules allow for the enforcement of a foreign money judgment.¹³
5. The Supreme Court of Canada later expanded the real and substantial connection test to apply to money judgments given outside Canada, including default judgments.¹⁴
6. A substantial connection with the subject matter of the action will satisfy the test even where no such connection to the defendant in the action exists.¹⁵
7. All presumptive connecting factors link the subject matter of the litigation to the forum, and in turn allow courts to assume jurisdiction over a claim.¹⁶
8. One presumptive factor is sufficient to satisfy the real and substantial connection test.¹⁷
9. The Supreme Court of Canada has identified the following listed presumptive factors:
 - a. The defendant is domiciled or resident in the province.
 - b. The defendant carries on business in the province.
 - c. The tort was committed in the province.
 - d. A contract connected with the dispute was made in the province.¹⁸

¹⁰ *Beals v. Saldanha*, 2003 SCC 72 ("Beals").

¹¹ *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, at para. 89 ("Pro Swing"). See discussion at bullets 20-25 below.

¹² *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 ("Morguard").

¹³ *Rubin v. Eurofinance SA; New Cap Reinsurance Corp Ltd v. Grant*, [2012] UKSC 46.

¹⁴ *Beals*, at paras. 31, 53.

¹⁵ *Beals*, at para. 23.

¹⁶ *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 ("Van Breda"), at para. 92; *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30.

¹⁷ *Van Breda*, at para. 100.

¹⁸ *Van Breda*, at para. 90.

10. Courts may also identify new presumptive connecting factors.¹⁹
11. To identify a new presumptive factor, courts will consider:
 - a. Similarity of the connecting factor with the recognised presumptive connecting factors.
 - b. Treatment of the connecting factor in the case law.
 - c. Treatment of the connecting factor in statute law.
 - d. Treatment of the connecting factor in the private international law of other legal systems with a shared commitment to order, fairness and comity.²⁰
12. The values of order, fairness and comity are useful analytical tools for assessing the strength of the relationship with a particular forum. These values underlie all presumptive connecting factors, whether listed or new.²¹
13. If the traditional indicia of residence and presence in the foreign jurisdiction, or consent to jurisdiction (by attornment or agreement to submit) are met then that establishes jurisdiction and supports the real and substantial connection to the action or parties.²²
14. A party will be found to have attorned to the jurisdiction of a foreign court where it takes steps to litigate the merits of the claim in that court.²³ The British Columbia Court of Appeal has gone so far as to find that a litigant can attorn to the jurisdiction of a court by its acts of participating in litigation, even where it has no actual intention of attorning.²⁴ However, a party is generally considered not to have attorned to the jurisdiction of a court where it appeared for the sole purpose of challenging that court's jurisdiction.²⁵
15. In *Chevron*, the Supreme Court confirmed that there need not be a "real and substantial connection" between the domestic enforcing court (i.e. Canada) and the action or defendant (i.e. the presence of assets belonging to the defendant); rather, the applicable jurisdiction analysis is limited to whether there was a real and substantial connection between the non-Canadian state and the defendant(s) or the subject matter in dispute.²⁶
16. Canadian courts will not concern themselves with whether or not the foreign court properly assumed jurisdiction over a dispute according to Canadian conflict of laws rules; it does not matter whether or not the court properly took jurisdiction pursuant to the local laws.²⁷

¹⁹ *Van Breda*, at para. 91.

²⁰ *Van Breda*, at para. 92.

²¹ *Van Breda*, at para. 79.

²² *Beals*, at para. 37; *Van Breda*, at para. 79.

²³ *Van Damme v. Gelber*, 2013 ONCA 388, leave to appeal refused, [2013] S.C.C.A. No. 342, at para. 3.

²⁴ *First National Bank of Houston v. Houston E & C Inc.*, [1990] W.W.R. 719 (B.C. C.A.), at paras. 11-12.

²⁵ *Wolfe v. Wyeth*, 2011 ONCA 347 at paras. 43-44.

²⁶ *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, at paras. 75-77.

²⁷ *Beals*, at para. 23; *CIMA Plastics Corporation v. Sandid Enterprises Ltd.*, 2011 ONCA 589.

17. Once the party arguing for jurisdiction has met its burden of identifying a listed or new presumptive factor, the other party may seek to rebut that presumption by convincing the court that assuming jurisdiction would be inappropriate. This can be achieved by demonstrating that the presumptive factor does not establish a real connection between the subject matter of the litigation and the forum, or that the connection is weak.²⁸
18. If the court concludes that it lacks jurisdiction due to either an absence of a presumptive factor or because that factor has been rebutted, it must dismiss or stay the action, subject to the doctrine of the forum of necessity.²⁹
19. There are three recognised defences to prevent enforcement of a foreign judgment: fraud, public policy, or a lack of natural justice.³⁰
20. In *Oakwell Engineering Ltd v. EnerNorth Industries Inc.*, the Court of Appeal for Ontario emphasised that in order to succeed on the bias aspect of the public policy defence, a defendant must prove “actual corruption or bias”.³¹
21. The theoretical basis for enforcing a foreign judgment is that a foreign court creates a new obligation on the defendant.³²
22. For a money judgment, the new obligation created by the foreign judgment is a debt.³³
23. For non-money judgments, the foreign judgment creates a different sort of obligation, which is valid if:
 - a. the foreign court had jurisdiction to adjudicate the dispute; and
 - b. there is no evidence of fraud, no violation of natural justice, and no violation of public policy.³⁴
24. The only purpose of an action to enforce a foreign judgment is to fulfil that obligation.³⁵

Enforcement of non-money judgments

25. Canadian courts take a flexible approach to enforcing foreign non-money judgments.³⁶
26. Courts may give effect to non-monetary and interlocutory orders if, in addition to an absence of fraud nor any violation to natural justice and public policy, the requirements of finality and clarity are met.³⁷

²⁸ *Van Breda*, at paras. 95-7.

²⁹ *Van Breda*, at para. 100.

³⁰ *Van Breda*, at para. 39-77.

³¹ *Oakwell Engineering Ltd v. EnerNorth Industries Inc.* (2006), 81 O.R. (3d) 288 (C.A.), leave to appeal refused, [2006] S.C.C.A. No. 343, at paras. 19-24.

³² *Pro Swing*, at paras. 77, 93; *Chevron*, at paras. 43-45.

³³ *Pro Swing*, at para. 89.

³⁴ *Pro Swing*, at para. 89.

³⁵ *Chevron*, at para. 42.

³⁶ See discussion in Janet E. Walker & Jean-Gabriel Castel, *Canadian Conflict of Laws*, loose-leaf (consulted on 16 May 2018), 6th ed (Markham, Ont.: Butterworths, 2005), s. 16-4.

³⁷ *Pro Swing*, at para. 92.

27. The requirements of clarity and finality are distinct concepts, yet the two often overlap. Both are based on the principles of judicial economy and the separation of judicial systems, which in turn reflect the values of comity, order and fairness.³⁸
28. The requirement of clarity means that an order must be sufficiently unambiguous to be enforced, such that someone who is unfamiliar with the case can understand what is required to meet the terms of the order.³⁹
29. The finality requirement is met if:
 - a. the enforcing court knows precisely what it is agreeing to enforce;
 - b. the party to whom the order is addressed is protected from injustice that could occur if the issuing court subsequently changes the order; and
 - c. there is no risk of undermining public confidence as could occur if the issuing court subsequently changes the order.⁴⁰
30. Examples of Ontario courts enforcing non-money judgments include:
 - a. The Court of Appeal upheld a decision to recognise a UK order for the company to convene a meeting of its creditors affected by the scheme of arrangement under s. 425 of the *Companies Act*, 1985 (UK).⁴¹
 - b. The Ontario Superior Court of Justice upheld an ex parte freezing order made by the US District Court for the Eastern District Court of New York over a bank account in Canada.⁴²
 - c. Trial and appeal courts recognised and enforced foreign injunctions.⁴³
 - d. The Court of Appeal recognised and enforced a foreign order for a constructive trust in Ontario against corporate defendants (the appellants).⁴⁴
 - e. The Court of Appeal recognised and enforced a foreign order for specific performance: to deliver a painting arranged for in a contract of sale.⁴⁵ The Court of Appeal recognised and enforced a foreign order for declaratory relief.⁴⁶

Reciprocity

31. Ontario has two statutes governing reciprocity: *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5 and the *Reciprocal Enforcement of Judgments (U.K.) Act*, R.S.O. 1990, c. R.6.
32. The regulation under the *Reciprocal Enforcement of Judgments Act* provides for the registration of a judgment in any other common law province or territory in Canada.⁴⁷

³⁸ Pro Swing, at para. 91.

³⁹ Pro Swing, at para. 97.

⁴⁰ Cavell Insurance Company, Re (2006), 80 O.R. (3d) 500, at para. 43 (C.A.) ("Cavell").

⁴¹ Cavell.

⁴² Johnson & Johnson v. Butt, [2007] O.J. No 4655 (Sup. Ct.).

⁴³ United States of America v Yemec, 2010 ONCA 414; Blizzard Entertainment Inc v Simpson, 2012 ONSC 4312.

⁴⁴ Bienstock v. Adenyo Inc, 2015 ONCA 310.

⁴⁵ Van Damme v. Gelber, 2013 ONCA 388, at para. 3.

⁴⁶ PT ATPK Resources TBK (Indonesia) v. Hopaco Properties Limited, 2014 ONCA 466.

⁴⁷ Reciprocal Enforcement of Judgments Act, O. Reg. 322/92: Application Of Act; see also Nicholas Rafferty, general ed., Joost Bloom et al., Private International Law in Common Law Canada, 3d ed (Toronto: Emond Montgomery, 2010), at 477.

- 33.** *The Reciprocal Enforcement of Judgments (UK) Act* (the “UK Act”) provides for a reciprocal enforcement of civil and commercial judgments for a sum of money given by a Canadian court with courts of the following jurisdictions: England and Wales (the High Court of Justice), Scotland (Court of Session), and Northern Ireland (the High Court of Justice).⁴⁸
- 34.** The UK Act does not apply to judgments that determine estates administration; nor to bankruptcies, insolvencies, or wind-ups, among others.⁴⁹
- 35.** Each statute and convention is unique and imports different procedural and substantive rules. However, generally, this legislation supplements but does not override the common law doctrine on the enforcement of foreign judgments.⁵⁰
- 38.** For a non-money judgment, the party seeking judicial intervention may instead make an application.⁵³
- 39.** In 2017, the Court of Appeal for Ontario held that:
- A two-year limitation period applies to a proceeding on a foreign judgment.
 - The limitation period begins to run, at the earliest, when the time to appeal the foreign judgment has expired or, if an appeal is taken, the date of the appeal decision. The time may be longer if the claim was not “discovered” within the meaning of s. 5 of the Limitations Act, 2002, until a date later than the appeal decision.⁵⁴
- 40.** For civil and commercial judgments covered under the UK Act, a six-year limitation period applies. That period runs from the date of the judgment, or from the date of the last appeal of the original judgment.⁵⁵
- 41.** If the defendant does not defend the action, the plaintiff may seek default judgment after noting the defendant in default.⁵⁶ If the defendant defends the action, the plaintiff may apply for summary judgment, an expedited trial procedure before a judge alone.⁵⁷
- 42.** If the judge grants recognition and enforcement of the foreign judgment in Ontario, that order will have reciprocal effect across common law jurisdictions in Canada.⁵⁸

Outline of procedural steps

- 36.** At the Ontario Superior Court of Justice, the province’s Rules of Civil Procedure apply to the recognition and enforcement of foreign judgments.⁵¹
- 37.** To recognise and enforce a foreign money judgment, the judgment creditor (plaintiff) will normally commence an action against the judgment debtor (defendant).⁵²

⁴⁸ U.K. Act, Part IV – Procedures.

⁴⁹ U.K. Act, Art. II.

⁵⁰ Stephen G.A. Pitel & Nicholas S. Raftery, *Conflict of Laws*, 2nd ed (Toronto: Irwin Law, 2016) at 201; *Morguard*, at para. 56.

⁵¹ *Rules of Civil Procedure*, R.R.O. 190, Reg. 194 (“Rules”).

⁵² *Rules*, R. 14.02. See e.g. *Bienstock v. Adenyo Inc.*, 2015 ONCA 310; see also Frank Walwyn & Kayla Theeuwes, *Enforcement of Judgments and Arbitral Awards in Canada: Overview*, 2018, online: <<https://ca.practicallaw.thomsonreuters.com/1-619-0729>>.

⁵³ *Rules*, R. 14.05. See e.g. *Blizzard v. Simpson*, 2012 ONSC 4312.

⁵⁴ *Independence Plaza 1 Associates, L.L.C. v. Figliolini*, 2017 ONCA 44, at para. 3.

⁵⁵ U.K. Act, Art. III - 1.

⁵⁶ See *Rules of Civil Procedure*, R 19.04 to 19.08.

⁵⁷ See *Rules of Civil Procedure*, R 20. See e.g. *Bienstock v. Adenyo Inc.*, 2014 ONSC 4997.

⁵⁸ *Reciprocal Enforcement of Judgments Act*, O. Reg. 322/92.

Cayman Islands

Introduction

1. A foreign judgment may be recognised and enforced in the Cayman Islands pursuant either to the common law jurisdiction or statutory powers (however the statute at present applies only to judgments from Australia⁵⁹).
2. If the judgment debtor is not resident or does not have its principal or registered office in the Cayman Islands leave to serve proceedings to enforce the foreign judgment will be required. The Grand Court Rules provide that leave to serve out may be granted where the Cayman Islands proceedings are brought to enforce any judgment.
5. The procedure applicable to enforcement under the Law is outlined in the Appendix to this note.

Common law recognition and enforcement

Statutory jurisdiction

3. The Foreign Judgments Reciprocal Enforcement Law (1996 Revision) (the "Law") provides a process whereby a foreign judgment may be registered and enforced in the Cayman Islands, such that the foreign judgment is deemed to have the same force and effect as if it were originally a domestic judgment.
4. However, the Law contains a requirement of reciprocity, and for that reason it has currently only been extended to various Australian states and territories. The Law is therefore presently of very limited practical utility but this will change once other reciprocal arrangements with other countries are agreed by the Governor-in Cabinet.
6. Despite the current absence of any mutual recognition arrangement with countries other than Australia, foreign judgments may nonetheless be recognised and enforced in the Cayman Islands under the common law jurisdiction. This is a long established jurisdiction which derives from English law and has been applied in other common law countries. The law of the Cayman Islands is based on the English principles and authorities but in some important respects is different and has recently adopted a new approach.
7. The common law doctrine is that a foreign judgment, although creating an obligation that is actionable in the Cayman Islands, cannot be enforced in the Cayman Islands without the institution of fresh legal proceedings. Accordingly the foreign judgment creditor will need to commence a new action in the Cayman Islands and that action will be subject to the Grand Court Rules. This doctrine applies to judgments in personam and not judgments in rem, which are subject to different rules (a judgment in rem determines the status of a thing or person as distinct from the particular interest in it of a party to the litigation).

⁵⁹ Applicability is likely to be expanded much wider afield to other jurisdictions by powers given to the Executive by the statute.

8. Where the foreign judgment is for a debt or definite sum of money (not being a sum payable in respect of taxes or other similar charges or in respect of a fine or penalty) the proceedings in the Cayman Islands will be a debt claim based on the amount ordered to be paid by the foreign judgment and the non-payment thereof. The foreign judgment creditor may apply for summary judgment.
9. The ground on which a foreign judgment is enforceable in England has traditionally been that the foreign judgment debtor is treated as being subject to an obligation to pay the sum which he has been ordered to pay by the foreign court. For this reason the common law jurisdiction has only been applied to judgments for a debt or a definite monetary sum. This is based on the decision in *Sadler v Robins* (1808) 1 Camp. 253 (Lord Ellenborough). Accordingly non-monetary judgments and orders, such as orders for specific performance or the delivery up of a chattel, are not covered. This does not mean, however, that the foreign judgment is of no effect. The foreign judgment creditor may be able to commence proceedings on the original cause of action and plead that the foreign judgment has already made the issues of substance on which liability depends *res judicata*.
10. However, the Cayman Islands Grand Court has recently adopted a different approach. In *Miller v Gianne* [2007] CILR Chief Justice Smellie reached the conclusion that *Sadler v Robins* had been disapproved by the Privy Council (in *Pattni v Ali* [2007] 2 A.C. 85) and should not be followed in the Cayman Islands, preferring instead to adopt the approach taken by the Supreme Court of Canada (in *Pro Swing Inc. v. Elta Golf Inc.* [2006] S.C.R. 52). The Chief Justice noted that:

“There the majority of the court [decided] ... that the traditional common law rule that limits the recognition and enforcement of foreign orders to final money judgments should be changed. Further, that the appropriate modern conditions for recognition and enforcement can be expressed generally as follows. The judgment must have been rendered by a court of competent jurisdiction and must be final and conclusive, and it must be of a nature that the principles of comity require the domestic court to enforce. Comity does not require receiving courts to extend greater judicial assistance to foreign litigants than it does to its own litigants, and the discretion that underlies equitable orders can be exercised by Canadian courts when deciding whether to enforce one. ... This invocation by the Canadian Supreme Court of equitable principles is derived from an examination of the history of the traditional common law limitations set now against the realities of modern day commerce and the global mobility of people and assets. Those are realities which exist no less so in our jurisdiction.”
11. The judgment in *Miller* has been followed in a subsequent case (*Bandone v Sol Properties* [2008] CILR 301 – Henderson J).
12. In the case of both monetary and non-monetary foreign judgments the Court will need to be satisfied that the foreign court had jurisdiction over the defendant, which will be the case where the defendant:
 - a. was ordinarily resident in the foreign country at the time of commencing the foreign proceedings (residence of a corporation in this context is determined by the place in which it carries on business);
 - b. voluntarily participated in the proceedings before the foreign court, other than simply to contest jurisdiction;

- c. appeared as a party in the proceedings before the foreign court, whether as a plaintiff or counter-claimant; or
 - d. expressly agreed to submit to the jurisdiction of the foreign court (as opposed to the laws of the foreign country), by contract or subsequent conduct.
- 13.** The foreign judgment must be final and conclusive, which may be the case even for a summary or default judgment. A judgment will be regarded as final and conclusive even if it is under appeal in the foreign court; however, if execution has been stayed by the foreign court, the Cayman court will commonly also stay enforcement of the judgment.
- 14.** The Court will not enforce a foreign judgment which would be contrary to public policy. For example, a foreign judgment which is repugnant to the Cayman Islands system of law such as a penal or pure tax judgment will not be enforced.⁶⁰
- 15.** A defendant may use any of the following grounds to challenge the recognition of a foreign judgment:
- a. the judgment was obtained by fraud;
 - b. the foreign court did not have jurisdiction;
 - c. the judgment is not final;
 - d. the court was not competent to determine the action;
 - e. recognition would be against the public policy of the Cayman Islands;
 - f. recognition would be contrary to the principles of natural justice.
- 16.** An application to enforce the foreign judgment at common law must be made by writ of summons setting out the cause of action and details of the foreign judgment creditor's claim. But the foreign judgment creditor must commence the Cayman Islands proceedings within six years of the foreign judgment.
- 17.** Personal service of the writ of summons is required.
- 18.** If the foreign judgment debtor does not reside in the Cayman Islands, an application must be made for leave to serve him outside the jurisdiction. If personal service is not possible or practicable, an application will need to be made to the Court for substituted service. The foreign judgment debtor is required to file an acknowledgement of service and a defence within the time limits set out in the Grand Court Rules.
- 19.** Absent the filing of an acknowledgment of service or defence, the foreign judgment creditor may apply for default judgment.
- 20.** If a defence is filed, the foreign judgment creditor may nevertheless apply for summary judgment on the grounds that there is no real triable defence to the action.

⁶⁰ Following the long established common law principle settled in *Huntington v Attrill* [1893] A.C. 150 and reaffirmed by the House of Lords in *Government of India v Taylor* [1955] A.C. 150

- 21.** Once judgment is granted, the means of execution available to the foreign judgment creditor include:
- a. A warrant of execution – the judgment debtor’s moveable assets are seized and sold to pay the judgment debt.
 - b. A sale of land – the judgment creditor may charge and sell immovable property of the foreign judgment debtor.
 - c. An attachment of assets beneficially owned by the judgment debtor (in the hands of a third party – bank account).
 - d. A garnishee order – debts owed to the judgment debtor can be claimed in satisfaction of the judgment debt.
 - e. A liquidation or bankruptcy order – judgment debtor’s estate can be wound up for failure to pay a due debt of \$100 or more.
- 22.** If a foreign judgment already contains an order for costs and/or interest, this may form part of the capital amount of the judgment debt awarded by the Court on the final determination. If not previously ordered, interest will automatically accrue from the date of the award being granted by the Cayman Islands Court in keeping with the Judicature Law. Successful parties will also typically recover the fees and costs of litigation incurred from the losing party.

Annex

Procedural steps to register and execute a foreign judgment under the Law

Registration

- 23.** An application under Section 4 of the Foreign Judgment Reciprocal Enforcement Law to register the judgment must be made by an ex parte originating summons unless the court directs the summons to be served on the judgment debtor.
- 24.** The application must be supported by an affidavit which:
- a. exhibits the judgment or a verified or certified copy thereof, and where the judgment is not in English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;
 - b. states the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent; and
 - c. states to the best of the information or belief of the deponent:
 - i. that the judgment creditor is entitled to enforce the judgment
 - ii. as the case may require, either that at the date of application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied
 - iii. that the judgment does not fall within the cases in which a judgment may not be registered under Section 4 of the Law

- 25.** An order will be drawn up by, or on behalf of, the judgment creditor, which gives them leave to register the judgment.⁶¹ The order will state the period within which an application may be made to set aside the registration and will contain a notification of execution that the judgment will not issue until after the expiration of that period.
- 26.** Registered judgments must then be filed in the Register of Judgments as if it were a judgment or order made by the court.
- 27.** Notice of registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the court may direct.⁶²

Setting aside registration

- 28.** An application to set aside the registration of a judgment must be made by summons supported by an affidavit.
- 29.** The court will have to hear the application and may order that any issue between the judgment creditor and the judgment debtor be tried in any manner in which an issue in an action may be ordered to be tried.

Execution of the judgment

- 30.** Execution of a registered judgment cannot take place until after the period specified as the period in which an application may be made to set aside the registration or until after the period specified which has been extended by the court.
- 31.** Any person wishing to issue execution on a judgment registered under the Law must produce to the Clerk of the Court, an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

⁶¹ Order 71 r 5 (2) No need to serve this order on the judgment debtor, unless the Court directs otherwise.

⁶² Order 71 rr 5-8.

Eastern Caribbean

1. A foreign judgment may be eligible for recognition in the British Virgin Islands and the OECS through statute and subordinate legislation or the common law.
2. After recognition, it can be enforced under ECSC Civil Procedure Rules 2000 (CPR) Part 43 and Part 45 like any other money judgment by the appointment of a receiver, a charging order, a garnishee order, Judgment summons (subject to the restrictions of any relevant Debtors Act), an order for the seizure and sale of goods, a committal order, or an order for the sequestration of assets.
3. Recognition may be obtained:
 - a. under statute and subordinate legislation; and
 - b. under common law.
4.
 - a. made by a superior court in civil proceedings;
 - b. a definite monetary award; and
 - c. final and conclusive.
5. The court has discretion to register a judgment for enforcement if the conditions under section 3(2) are not violated.
6. Section 3(2)(a) to (f) of the Act requires the court to consider:
 - a. whether the original court acted without jurisdiction;
 - b. if the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily submit or agree to submit to the jurisdiction of that court;
 - c. whether the judgment debtor was duly served;
 - d. if the judgment was obtained by fraud; or
 - e. if the High Court is satisfied that an appeal is pending or that the judgment debtor is entitled and intends to appeal.
7. Where the conditions under section 3(2) are not answered to the court's satisfaction, the Court has no discretion and is precluded from registering the judgment.

Statute

Reciprocal Enforcement of Judgments Act: registration and enforcement

4. The term "judgment" is defined in section 2(1) of the Act as any judgment or order given or made by a court in any civil proceedings whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has been in pursuance of the law in force in the place where it was made, and became enforceable in the same manner as a judgment given by a court in that place. For a foreign judgment to be registered pursuant to the Reciprocal Enforcement of Judgments Act, an application must be made within 12 months of the date of the judgment (or a longer period if allowed by the court). The judgment must be:

8. Otherwise, if it considers in all the circumstances of the case that it is just and convenient that the judgment be enforced, the court may order registration of the judgment. Once registered, it can be enforced like any other BVI judgment under CPR Part 43 and CPR Part 45.
9. Section 3(1) provides that where a judgment as defined in the Act has been obtained in the High Court in England or Northern Ireland or in the Court of Session in Scotland, the judgment creditor may apply to the High Court at any time within 12 months after the date of the judgment (or such longer period as may be allowed by the Court) to have the judgment registered. On any such application the Court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in the BVI, order the judgment to be registered. That provision has been extended to include judgments of superior courts of The Bahamas, Barbados, Bermuda, Belize, Trinidad and Tobago, Nigeria, Grenada, Saint Lucia, Saint Vincent, Guyana, Jamaica and New South Wales.
 - b. A verified, certified or otherwise duly authenticated copy of the judgment and, if the judgment is not in the English language, an English translation of it certified by a notary public or authenticated by affidavit. Evidence on affidavit must also state the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as is known to the deponent and state to the best of the information or belief of the deponent that:
 - i. the judgment creditor is entitled to register the judgment; and either (a) that at the date of the application the judgment has not been satisfied; or (b) the amount in respect of which it remains unsatisfied;
 - ii. the judgment may be ordered to be registered for enforcement under any relevant enactment; and
 - iii. the registration would not be, or be liable to be, set aside under any relevant enactment

Procedural steps

10. Part 72 of the CPR provides the procedural mechanism for registration whereby under the provision of any law a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within the BVI or other member state of the OECS.
11. An application may be made ex parte supported by:
 - a. Affidavit evidence specifying, inter alia, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application.
12. Under CPR 72.3, the court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.
13. Any order made by the court must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.
14. After a judgment has been registered, notice of the registration of a judgment must be served on the judgment debtor by delivering it to the judgment debtor personally or in such other manner as the court may direct.

15. The notice of registration must state full particulars of the judgment registered and the order for registration, the name and address of the judgment creditor or of the legal practitioner or agent on whom any summons issued by the judgment debtor may be served, the period within which an application to set aside the registration may be made and the right of the judgment debtor to apply to have the registration set aside.
16. Service of such a notice out of the jurisdiction is permissible without leave, but the service requirements are the same as that for a claim form.
19. Permission is readily given under CPR rule 7.3(5) to serve out for enforcement of a claim form if it is made to enforce any judgment or arbitral award which is made by a foreign court or tribunal and is amenable to be enforced at common law. In cases where the judgment debtor is resident in a country which is party to the Hague Service Convention service under CPR 7.9(3) must first be attempted on the judgment debtor under the procedure prescribed in that Convention.
20. In order for a claimant to be able to sue on the foreign judgment it must establish that:

Common law enforcement

17. Foreign money judgments which cannot be registered under the Reciprocal Enforcement of Judgments Act must be enforced under the common law.
18. A claim must be commenced by the claimant under CPR Part 8 to start proceedings in the usual manner by issuing a claim form and claiming in debt for the amount of the foreign judgment. In the pleadings the judgment creditor would rely on the foreign judgment and typically state that accordingly there is no defence to the claim. This foreshadows an application for summary judgment. The claim form would then have to be served on the judgment debtor. If domiciled in the jurisdiction, service would fall under Part 5 of CPR, but if not, the claimant must obtain permission to serve out of the jurisdiction under CPR 7.3.
- a. the foreign court had jurisdiction over the parties;
- b. the judgment had been final and conclusive in the sense that the parties must be able to identify the extent of their rights and obligations under it; and
- c. the judgment had been for a fixed sum.
21. With the establishment of these three elements the claimant would become entitled, *prima facie*, to have the judgment recognised and then enforced. The defendant could negate such recognition and enforcement by proving one or more of the accepted defences, namely that the foreign judgment was obtained:
 - a. by fraud;
 - b. being contrary to natural justice; or
 - c. in contravention of public policy; for example, the judgment is to enforce a foreign tax law or penal law. The category of public policy is not closed.

Jamaica

The enforcement of foreign judgments in Jamaica

1. A judgment of a foreign court or tribunal is not enforceable unless it is recognised by the court in Jamaica. Recognition is achieved in either one of two ways. A party may register the judgment pursuant to statutes which provide for the registration of foreign judgments. Alternatively a party may commence legal action in Jamaica's court, in the usual way, and sue on the foreign judgment. That is, as part of the cause of action, allege that the defendant has been found liable in the foreign tribunal. This approach, sometimes called registration at common law, is most likely to be successful where the defendant submitted to the jurisdiction of the foreign court or tribunal in which the judgment was obtained. Both methods are considered below.

Enforcement by registration

2. There are two applicable statutes:
 - a. The Judgments and Awards (Reciprocal Enforcement) Act 1923.
 - b. The Judgments (Foreign) (Reciprocal Enforcement) Act 1936.

Both are referred to herein collectively as "the Acts".
3. The Judgments and Awards (Reciprocal Enforcement) Act 1923 applies to any judgment obtained in a superior court in the United Kingdom. By virtue of section 3 of the Act the judgment creditor may apply at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered. Section 6 empowers the Governor General in Council to make orders for its provisions to extend to any part of the Commonwealth outside the United Kingdom subject to reciprocal enforcement in that country of judgments given in the Supreme Court of Jamaica. Such orders have been made in respect of several Commonwealth countries.⁶³

⁶³ These states include Barbados, Guyana, Grenada, Leeward islands, St. Vincent, Bahamas, Trinidad and Tobago, St Lucia, Bermuda, British Honduras, Dominica The Commonwealth of Australia and the Australian States.

4. A judgment shall not be ordered to be registered if:
 - a. The original court acted without jurisdiction.
 - b. The judgment debtor, not being ordinarily resident or not carrying on business in that jurisdiction, did not voluntarily appear or submit or agree to submit to that court's jurisdiction.
 - c. The judgment debtor was not duly served with process and did not appear notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction.
 - d. The judgment was obtained by fraud.
 - e. The judgment debtor satisfies the court that an appeal is pending or that he is entitled to and intends to appeal against the judgment.
 - f. The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by Jamaica (the registering court).
5. The Judgments (Foreign) (Reciprocal Enforcement) Act 1936,⁶⁴ by section 3 thereof, provides for the Governor General in Council to extend the benefits of the Act to judgments given in the superior courts of any foreign country subject to reciprocity of enforcement.⁶⁵ The Judgments (Foreign) (Reciprocal Enforcement) Act 1936 is therefore utilised for the registration of judgments from foreign countries which are not members of the Commonwealth. By section 9 the Governor General is given power to extend its provisions to parts of the Commonwealth. If he does so the Act of

1923 would cease to have effect in relation to that part of the Commonwealth. The main considerations, on an application to register a foreign judgment, are that the judgment must be:

- a. Final and conclusive as between the parties thereto and will be considered to be so notwithstanding that an appeal may be pending against it or that it is subject to an appeal in the courts of the country in which the judgment was granted.
- b. There must be a sum of money payable not being a sum payable in respect of taxes or similar charges or in respect of a fine or other penalty.

Statutory procedure to register a foreign judgment

6. The procedure for registration under the Acts is governed by the Civil Procedure Rules 2002 (as amended), the "CPR", and in particular Part 72. An application to have a judgment registered in the Court may be made without notice but must be supported by an affidavit:
 - a. exhibiting the judgment or a verified, certified or otherwise duly authenticated version in English;
 - b. stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and judgment debtor respectively;

⁶⁴ It is similar in its terms to the English Foreign Judgments (Reciprocal Enforcement) Act 1933.

⁶⁵ By Order under section 3(1) Part 1 the Act has been extended to (1) the United Kingdom; and (2) the House of Lords, the Supreme Court of Judicature of England and Wales (Court of Appeal and High Court of Justice) the Courts of Chancery of the Counties Palatine of Lancaster and Durham, the Courts of Sessions in Scotland and the Supreme Court of Northern Ireland shall be deemed Superior Courts of the United Kingdom for purposes of Part I of the Act.

- c. stating that the judgment creditor is entitled to enforce the judgment and that at the date of the application the judgment has not been satisfied; or stating the amount which remains unsatisfied;
 - d. stating that the judgment may be ordered to be registered and would not be liable to be set aside under the Acts; and
 - e. specifying any amount of interest which may have become due under the law of the country of the original court.
7. The order giving leave to register a judgment must be drawn up by or on behalf of the judgment creditor and, except where it is made following an application on notice, it need not be served on the judgment debtor. The order must state the period within which an application may be made to the court to set aside any order made and that execution of the judgment will not issue until after that date.⁶⁶
 8. CPR 72.6 provides that notice of the registration of a judgment must be served on the judgment debtor personally or in such manner as the court may direct. The notice of registration must state all the relevant details contained in the order.
 9. An application to set aside the registration of a judgment must be supported by evidence on affidavit. The court may set aside the registration of the judgment where it is satisfied that, inter alia, it is not just and convenient that the judgment should be enforced within the jurisdiction or there is some other sufficient reason.⁶⁷ The Act of 1936 provides that registration may be set aside if the foreign court had no jurisdiction or if the defendant did not have sufficient time to and did not appear in those proceedings or the judgment was obtained by fraud or the rights in the judgment are not vested in the person applying for its registration. Jurisdiction is deemed to have existed if among other things the defendant submitted to the jurisdiction of the court or agreed to submit to the jurisdiction or was resident in the jurisdiction when proceedings were instituted. Section 6 (3) (c) provides that jurisdiction shall not be deemed to exist if among other things the defendant under the rules of international law was entitled to immunity and did not submit to the jurisdiction.
 10. Once there is no successful challenge and the foreign money judgment is properly registered, it may be enforced as with a local judgment in any or all of the following ways:
 - a. By order for the seizure and sale of goods.
 - b. By charging order.
 - c. By order for attachment of debts.
 - d. By appointment of a receiver.
 - e. By judgment summons (and committal).
 - f. By an order for sale of land.
 - g. By proceedings in bankruptcy.

⁶⁶ CPR 72.4.

⁶⁷ CPR 72.7.

Enforcement at common law

11. Where there has been no extension of the statutory regime to a particular state there will be no statutory framework existing between Jamaica and such state which governs the enforcement of judgments. Where this is the case, the appropriate channel for a litigant seeking the enforcement of a foreign money judgment is at common law.⁶⁸ As a result, of the limited number of jurisdictions to which the Acts have been extended, litigants very commonly have to utilize the common law procedure. It should be noted that there is no provision in the Acts for the registration of non-monetary foreign judgments and consequently such judgments have to be enforced at common law. There is also the view that if a part of the judgment is monetary it may qualify for registration under the Acts.⁶⁹ The relevant preconditions for the enforcement of a foreign judgment at common law are as follows:

- a. It must be given by a court of competent jurisdiction.
- b. It must be final and conclusive.
- c. It must be enforceable by or under Jamaican law.
- d. It must relate to a money debt and not immovable property.
- e. It must be for a definite sum of money and should not be a penalty.⁷⁰

12. Importantly section 8 of the Act of 1936 prohibits a claim at common law on a foreign judgment which was registrable under that Act. Enforcing a foreign judgment at common law is achieved by the judgment creditor bringing a claim in debt and relying on the foreign judgment. In an appropriate case the claimant may also be able to obtain summary judgment of a claim brought by this method under Part 15 of the CPR, on the ground that there is no real prospect of successfully defending the claim.⁷¹ Once judgment is obtained the judgment creditor will be able to utilize the enforcement processes available to local money judgments and judgments registered for enforcement pursuant to the Acts and the CPR part 73 (as to which see paragraph 10 above).

13. A judgment of a foreign court of competent jurisdiction which is final and conclusive and which has satisfied the preconditions referred to earlier cannot generally be impeached because of any error of fact or law and may only be impeached:

- a. on the basis of fraud;⁷²
- b. on the basis that its recognition and enforcement would be contrary to public policy; or
- c. if it was obtained in proceedings contrary to the principles of natural justice

⁶⁸ *Dennis (Sylvester) v Dennis (Lana)* [2016] JMCA Civ 56 a decision of the Jamaican Court of Appeal.

⁶⁹ This was the view of the Edwards J (as she then was) sitting in the commercial court in *Westar International Limited v Ryland Campbell and Winston Finzi* 2018 JMCC Comm 44.

⁷⁰ *Dennis (Sylvester) v Dennis (Lana)* (supra) at paragraph 36.

⁷¹ In the case of *Dennis (Sylvester) v Dennis (Lana)* (supra) the Court of Appeal set aside the summary judgment on the ground that there were many issues to be determined at a trial impacting the question whether the judgment was enforceable in Jamaica.

⁷² In the case of *Vasconcellos (Richard) v Jamaica Steel Works Ltd. (formerly Jamaica Steel & Plastic Ltd) et al* Supreme Court Civil Appeal No 1 of 2008 the Jamaican Court of Appeal examined the applicable principles to a challenge on the basis of fraud in depth and agreed with the approach taken in the English cases.

United States of America

Delaware

Recognition of foreign judgments

1. Foreign judgments for money, with limited exceptions, will be recognised and enforceable under Delaware law as provided for by the Uniform Foreign-Country Money Judgments Recognition Act (UFMJRA), codified at Title 10, Chapter 48 of the Delaware Code.⁷³
2. Under the UFMJRA, a Delaware court will recognise a foreign-country judgment that grants or denies recovery for a sum of money when the foreign-country judgment is final, conclusive, and enforceable under the law of the foreign country in which the judgment was rendered.⁷⁴ Under the UFMJRA, a "foreign-country judgment" is a judgment of a court of a foreign country, and a "foreign country" is a government other than: the United States; a state, district, commonwealth, territory, or insular possession of the United States; or any other government with regard to which the decision in the State of Delaware as to whether to recognise a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution (U.S. Const. art. IV, § 1).⁷⁵ The party seeking recognition of a foreign-country judgment has the burden of establishing that the UFMJRA is applicable to that foreign-country judgment.⁷⁶
3. Notwithstanding the foregoing, a Delaware court will not recognise foreign-country judgments under the UFMJRA for taxes, fines or other penalties, judgments rendered for divorce, support, maintenance, or any other judgment rendered in connection with domestic relations, as UFMJRA does not apply to judgments for such matters.⁷⁷ Furthermore, under the UFMJRA, a Delaware court will not recognise a foreign-country judgment under certain enumerated circumstances, and the UFMJRA affords the court discretion in making a determination as to whether to recognise a foreign-country judgment in other circumstances.
4. Specifically, a Delaware court will not recognise a foreign-country judgment if the judgment was rendered under a judicial system that does not provide impartial tribunals or does not follow procedures compatible with the requirements of due process of law, nor will the Delaware court recognise a foreign-country judgment if the foreign court lacked either subject matter or personal jurisdiction.⁷⁸ However, lack of personal jurisdiction will not serve as a defense against recognition of the foreign-country judgment if:

⁷³ Certain language of Chapter 48 of the Delaware Code has been recited verbatim herein without quotations.

⁷⁴ 10 Del. C. § 4802(a).

⁷⁵ 10 Del. C. § 4801.

⁷⁶ 10 Del. C. § 4802(c).

⁷⁷ 10 Del. C. § 4802(b).

⁷⁸ 10 Del. C. § 4803.

- a. The defendant was served with process personally in the foreign country;
 - b. The defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the foreign court over the defendant;
 - c. The defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court;
 - d. The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;
 - e. The defendant had a business office in the foreign country and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country;
 - f. The defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of such operation; or
 - g. Any other basis for personal jurisdiction that a Delaware court views as sufficient to support a foreign-country judgment.⁷⁹
5. Delaware courts may exercise discretion in determining whether to recognise a foreign-country judgment in the following circumstances:
- a. The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
 - b. The foreign-country judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
 - c. The foreign-country judgment or the cause of action on which the judgment is based is repugnant to either the public policy of the State of Delaware or the United States;
 - d. The foreign-country judgment conflicts with another final and conclusive judgment;
 - e. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
 - f. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
 - g. The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering foreign court with respect to the judgment; or
 - h. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.⁸⁰

⁷⁹ 10 Del. C. § 4805.

⁸⁰ 10 Del. C. § 4803(c).

6. The party opposing the recognition of a judgment under the UFMJRA has the burden of establishing the existence of one of the grounds for non-recognition described in paragraphs 3 and 4 above.⁸¹
7. The UFMJRA does not prevent a Delaware court from recognising under the principles of comity or otherwise a foreign-country judgment that is not within the scope of the UFMJRA.⁸²
8. A party seeking to enforce a foreign-country judgment under the UFMJRA must commence an action within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.⁸³
9. If the recognition of a foreign-country judgment is sought under the UFMJRA as an original action, the party seeking recognition needs to file an action.⁸⁴ The action may be filed as a complaint in the Superior Court of the State of Delaware with the filing fee prescribed by the Superior Court Civil Rules.⁸⁵ If the recognition of a foreign-country judgment is sought in a pending action, under the UFMJRA, the party seeking recognition may raise the issue of recognition by counterclaim, cross-claim or affirmative defense in such pending action.⁸⁶
10. Pursuant to the UFMJRA, a Delaware court may stay any proceedings relating to a foreign-country judgment if a party demonstrates that an appeal of such judgment is pending.⁸⁷ Such a stay may continue until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal, but has failed to do so.⁸⁸
11. Under the UFMJRA, once a Delaware court recognises a foreign-country judgment for the grant or denial of a recovery of a sum of money, that judgment is conclusive between the parties to the same extent as the judgment of another state in the United States that would be entitled to full faith and credit in the State of Delaware,⁸⁹ and is enforceable in the same manner and to the same extent as a judgment rendered in the State of Delaware.⁹⁰

⁸¹ 10 Del. C. § 4803(d).

⁸² 10 Del. C. § 4807.

⁸³ 10 Del. C. § 4811.

⁸⁴ 10 Del. C. § 4809(a).

⁸⁵ See Del. Super. Ct. Civ. R. 77(h) (as amended August 10, 2018).

⁸⁶ 10 Del. C. § 4809(b).

⁸⁷ 10 Del. C. § 4806.

⁸⁸ Id.

⁸⁹ See U.S. Const. art. IV, § 1 (providing that "Full Faith and Credit shall be given in each State [of the United States] to the public Acts, Records, and judicial Proceedings of every other State [of the United States]. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.").

⁹⁰ 10 Del. C. § 4810.

New York USA

Introduction

1. The purpose of this memorandum is to set out the procedures for the enforcement of foreign court money judgments in State and Federal courts in New York. This memorandum is concerned only with judgments requiring a person to pay a sum of money to another person.
2. The discussion set forth below was prepared by practitioners in New York.
3. Neither State nor Federal judges in New York have any authority to issue advisory opinions. This memorandum has no binding legal effect whatsoever. It does not constitute a treaty or legislation, is not binding on any judges and does not supersede any existing laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing legal rights or relations or to create any binding arrangements for the enforcement of money judgments. It is not intended to be cited or relied upon in any legal proceedings whether for the entitlement to recognition of judgments of foreign courts or for its discussion of United States state and federal law.
4. This memorandum is intended only to give general information about the enforcement process in New York. In an actual case of enforcement, the party seeking enforcement of a foreign court judgment will need to engage a lawyer qualified to appear in a State or Federal court in New York having jurisdiction. That lawyer should make his or her own legal assessment and not rely on this simplified discussion.

Courts located in New York

5. There are two judicial systems in New York: State and Federal. The State Court of first instance is called the Supreme Court for the county in which it sits, and its judges are, with some exceptions, elected for 14-year terms by voters in the state judicial district in which it sits. The federal court of first instance is called the District Court, and its judges are appointed for lifetime terms by the President of the United States with the consent of the United States Senate.
6. A foreign country judgment creditor may seek recognition in New York of a foreign country judgment in either State or Federal court.

The Requirements for enforcing foreign court Judgments in New York courts

Jurisdictional requirements

7. Generally, in order for a State or Federal court to hear a case, it must have both subject matter (type of case) and personal (authority over the parties) or asset-based jurisdiction (authority over assets located in the jurisdiction). The New York Supreme Courts have general jurisdiction over all types of cases, and therefore subject matter jurisdiction will generally be present. Federal District Courts are courts of limited jurisdiction, but that jurisdiction includes "diversity" cases where the amount in dispute exceeds \$75,000 and is between citizens of two different states of the United States or between a citizen of a state and a citizen of a foreign country (but not between two citizens of foreign countries). This means that if the dispute is between two companies headquartered or incorporated abroad,

the recognition proceeding should be filed in a New York State court. In a recognition and enforcement proceeding, asset-based jurisdiction is generally not a problem provided that assets of the judgment debtor are known to be located in New York. In that case, however, the binding effect of the recognition and enforcement orders may be limited to particular assets if there is not, in addition, personal jurisdiction over the judgment debtor. Recent decisions of courts in the United States leave open the question of what connection between the judgment debtor and the State of New York is needed to allow the court to exercise personal jurisdiction over the judgment debtor. This open question arises from federal constitutional considerations and therefore potentially exists for recognition and enforcement proceedings throughout the United States. Rather than set forth the competing positions here, it makes sense for the party seeking recognition and enforcement to seek case specific guidance from qualified counsel in the United States.

8. If personal jurisdiction does exist, once a foreign money judgment (not including one for taxes or related to matrimonial matters) has been recognised in any State of the United States, most courts in the United States will enforce it in the same manner as any other US judgment by according what is called “full faith and credit” under the United States Constitution. Because of this strong presumption in favour of enforcement, most United States courts allow a recognition judgment of a State or Federal court that had personal jurisdiction over the judgment debtor to be enforced following a simple registration of the judgment through

filing with the court clerk. Moreover, New York law gives the judgment creditor broad rights of global discovery to locate assets potentially subject to enforcement. Since a party pursuing enforcement of a foreign court judgment will have retained a New York lawyer, the specific mechanics of enforcement, e.g. garnishment, attachment, turnover and levy, are beyond the scope of this discussion. Suffice it to say that courts in New York are not hostile to the vigorous enforcement of duly recognised foreign court money judgments.

9. The presumption of foreign judgment validity is rooted in the common law doctrine of “comity”, which favours respect for the sanctity of the foreign jurisprudence with limited exceptions. The United States Supreme Court set forth this doctrine in *Hilton v. Guyot*, an opinion that has become widely accepted judicial policy.⁹¹

New York law governing recognition

10. New York State law governs recognition in both Federal and State courts in New York. This is because the only basis for federal jurisdiction is the diversity jurisdiction described above, and in a diversity case, State law is the applicable law governing matters of substance. This can be contrasted with actions for the confirmation and enforcement of international arbitration awards, which are governed by applicable international treaties (e.g. the New York Convention) and can be litigated in Federal court under what is called federal question jurisdiction.

⁹¹ *Hilton v. Guyot*, 159 U.S. 113, 164 (1895) (“[Comity] is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.”).

11. New York has adopted the 1962 version of the Uniform Recognition of Foreign Money Judgments Act, and the terms as enacted in New York can be found in Article 53 of the New York Civil Practice Law and Rules (CPLR). This statute articulates common law jurisprudence. Consistent with the Uniform Act, New York courts generally recognise foreign country money judgments that are final, conclusive and enforceable where rendered even though an appeal therefrom is pending or possible in the future. The New York State or Federal court from which recognition is sought may, however, stay the recognition proceeding in its discretion in light of a pending or intended appeal abroad. The law is unsettled whether recognition will be given to a default foreign country judgment.

Mandatory grounds for non-recognition under New York law

12. Under Article 53 of the CPLR there are two mandatory grounds for non-recognition of a foreign court money judgment under New York law.

13. The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law. The procedures do not have to be like those employed in New York so long as substantial justice is provided by an impartial judiciary.

14. The foreign court did not have personal jurisdiction over the defendant. Under the following circumstances, a New York court will not find that the foreign court lacked personal jurisdiction and thus will not refuse to recognise a foreign country judgment due to lack of personal jurisdiction:

- a. The defendant was served personally in the foreign state.
- b. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him.
- c. The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.
- d. The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state.
- e. The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state.
- f. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.

The State or Federal courts in New York may also give recognition under other bases of personal jurisdiction that are considered fundamentally fair in the United States, such as jurisdiction over a claim arising from the transaction of business in the foreign jurisdiction.

Discretionary grounds for non-recognition under New York law

- 15.** The following are the statutory grounds upon which a State or Federal court in New York may deny recognition:
- The foreign court lacked subject matter jurisdiction.
 - The defendant did not receive notice of proceedings in sufficient time to defend.
 - The judgment was obtained by fraud.
 - The cause of action on which the judgment is based is repugnant to the public policy of this state (New York) (a judgment will not be considered repugnant simply on the ground that it would be decided differently under New York law).
 - The judgment conflicts with another final and conclusive judgment;
 - The proceeding in the foreign court was contrary to a prior agreed-upon method of settlement.
 - In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.⁹²

Recognition may also be denied to a defamation judgment obtained in a country providing less protection for freedom of speech than would be provided under the US or New York Constitution.

The procedure for enforcement of foreign judgments in New York courts

- 16.** Recognition of foreign country money judgments may be sought in one of three ways:
- By filing (with notice to the judgment debtor) an action for recognition and enforcement of the judgment.
 - In State court, a motion for summary judgment in lieu of a complaint.⁹³
 - If an action is already pending in New York between the same parties, the foreign judgment can be enforced by filing a counterclaim, cross-claim or asserting an affirmative defense.

In New York, one may not commence an action to recognise or enforce a foreign country judgment after the statute of limitations on judgment enforcement has run in either New York or the foreign jurisdiction.⁹⁴ The applicable statute of limitations in New York is generally 20 years.

⁹² N.Y. C.P.L.R. 5305 (b). But see *Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros.*, 38 Misc.3d 831, 957 N.Y.S.2d 602 (Sup. Ct. N.Y. Cty. 2012), *aff'd*, 100 A.D.3d 578, 973 N.Y.S.2d 197 (1st Dep't 2013) (finding that "[i]n the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action." N.Y. C.P.L.R. 5304(b)(7) did not apply in part because the defendant was served in his home country of Saudi Arabia, not in the forum country, Bahrain).

⁹³ N.Y. C.P.L.R. 3213.

⁹⁴ N.Y. C.P.L.R. 202 ("An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.").

Pennsylvania USA

Statutory framework

1. Formerly under Pennsylvania state law, foreign country money judgments were merely rights of action. Parties were required to commence civil action to have a foreign country judgment recognised and enforced in Pennsylvania State Court.
2. Foreign nation judgments are not automatically entitled to full faith and credit under US Constitution. Such foreign country judgments are subject to the principles of comity – “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation...” See *Hilton v Guyot*, 159 U.S. 113, 163-64 (1895). See also *Louis Dreyfuss Commodities v Financial Software Systems, Inc.*, 99 A. 3d 79 (Pa. Super.2014).
3. Since 1990, the Uniform Foreign Judgments Recognition Act, 42 P.S. §§22001-22009 (Recognition Act) provides the basis for a foreign money judgment to be recognised so that it may be enforced through the Enforcement of Foreign Judgments Act, 42 Pa.C.S.A §4306 (Enforcement Act).
4. The Recognition Act applies to any judgment of a foreign government – “any governmental unit other than the United States, any state...” (42 P.S. §22002). A foreign judgment is any judgment of a foreign government granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty or a judgment in matrimonial or family matters.
5. The Recognition Act applies to any foreign judgment that is final, conclusive and enforceable, even though an appeal is pending or is subject to an appeal 42 P.S §22009.

6. US enforcement proceedings may be stayed if the matter is under appeal in the foreign jurisdiction.

Procedural safeguards

7. The statutory process contains multiple safeguards to allow a domestic court to examine an underlying action in a foreign court to determine whether recognition and enforcement of the foreign judgment is appropriate.
8. Per 42 P.S. §22004, there is no recognition of the foreign judgment if:
 - a. The defendant in the foreign proceeding did not receive sufficient notice of the proceedings to allow a defense.
 - b. The judgment was obtained by fraud. See *Geerlings v Van Hoekelen*, 2016 WL 6834033 (M.D. Pa. 2016) – the fraud must be “extrinsic fraud” – not an issue that could have been raised at trial but involving, for example, a party withholding favourable evidence in the foreign action.
 - c. If jurisdiction is based only on personal service of process, was the foreign court “a seriously inconvenient forum”?
 - d. The cause of action or claim for relief on which the judgment was based is repugnant to the public policy of the Commonwealth of Pennsylvania.
 - e. The proceeding in the foreign court was contrary to an agreement of the parties under which the dispute was to be settled, otherwise than by proceedings in that court.
 - f. The judgment conflicts with another final and conclusive judgment.

9. A foreign judgment is not conclusive, under 42 P.S. §22005, if:
 - a. The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with due process of law.
 - b. The tribunal did not have personal jurisdiction over the defendant.
 - c. The foreign court did not have jurisdiction over the subject matter.
 10. Pursuant to 42 P.S. §22006, a foreign judgment shall not be refused recognition for lack of personal jurisdiction if:
 - a. The defendant was served personally in the foreign state.
 - b. The defendant voluntarily appeared in the proceedings other than for various limited purposes, such as contesting jurisdiction.
 - c. The defendant had agreed to submit to the jurisdiction prior to the commencement of the proceedings.
 - d. The defendant was domiciled in the foreign state or if a corporation, had its principal place of business in the foreign state, was incorporated there, or had otherwise acquired foreign status there.
 - e. The courts of the Commonwealth of Pennsylvania recognised "other bases of jurisdiction".
- iii. Whether the nature of notice, type of proceeding, location of forum and jurisdictional requirements justify recognition and enforcement of the foreign money judgment.
 - b. Procedure to get foreign country money judgment recognised:
 - i. Party seeking enforcement must file a "Praeipere to Enter Foreign Judgment" with Court Clerk's Office, per 42 P.S. §22003.
 - ii. Copy of judgment and docket entries of foreign court.
 - iii. Various requirements in the statute ensure that the debtor receives notice of judgment filing, including an affidavit from the judgment creditor or his/her lawyer that the foreign judgment is valid, enforceable and unsatisfied.
 - c. Challenges by Debtor – 42 Pa.C.S.A. §4306(b):
 - i. A judgment filed under the Enforcement Act shall be a lien against the debtor.
 - ii. Judgment is subject to the same procedures, defences and proceedings for re-opening, vacating or staying as any domestic judgment.
 - iii. The foreign country money judgment may be enforced or satisfied in the same manner as a domestic judgment.

Practical impact of recognition and enforcement of foreign judgments:

- a. Recognition Act permits reviewing domestic court to undertake analysis of foreign court's proceedings to determine:
 - i. Whether the judgment is final and conclusive.
 - ii. Whether foreign proceedings comport with due process.

Next steps in process

11. Once judgment is docketed, absent any stay in the proceedings, the matter becomes a routine collection matter.
12. The judgment creditor has multiple options available to collect the money due and owing, depending on the amounts owed and the parties. See *National Asset Loan Management Limited v John McCann* #1401-03130, (Orders dated October 21, 30, 2014), aff'd Memorandum decision, 2015 WL 666227 (Pa. Super. Sept. 3, 2015). Approves use of financial monitor and charging orders against debtor's partnership interests.
13. Also, attachments and bank account levies are possible alternatives – as in any collection matter.
14. There remain open questions in this area – it is unclear whether the limited discovery procedures in some legal systems, such as France, would impact the recognition of an otherwise valid foreign judgment – in light of the wide-ranging discovery permitted in American courts. Also, how may American courts become more familiar with the practices and procedures in developing nations' legal systems?
15. The overriding goal of the Recognition/ Enforcement Acts framework is to avoid re-litigating the foreign case, i.e. to avoid a second trial of identical issues.
16. The vitality and efficacy of the Uniform Foreign Money Judgment Recognition Act was recently recognised in the case of *Eclipse Liquidity, Inc. v. Geden Holdings Limited*, 779 EDA 2018 (Pa. Super. November 13, 2018).





Asia

China, People's Republic of

Background Information about China's Law and Practice on Recognition and Enforcement of Civil and Commercial Judgments.

Legal system relevant to recognition and enforcement

1. According to the *Civil Procedural Law of the People's Republic of China* (CPL), there are three basic conditions for a people's court to recognise and enforce a foreign court's civil or commercial judgment:
 - a. China and that foreign country have entered into or participated in an international treaty on the recognition and enforcement of civil and commercial judgments, or have had a reciprocal relationship.
 - b. The foreign court's civil or commercial judgment has become legally effective, being a final judgment.
 - c. The recognition and enforcement of that foreign civil or commercial judgment does not violate the basic principles of law, national sovereignty or security, or social public interest.⁹⁵
2. The review system is specified as follows:
 - a. After receiving a written request for recognising and enforcing a foreign court's civil or commercial judgment, a people's court will grant recognition and enforcement in accordance with the treaty's provisions if an international treaty entered or participated by the People's Republic of China (PRC) contains provisions about such civil or commercial judgments. China is a member of the *International Convention on Civil Liability for Oil Pollution Damage* of 1969 and its Protocol of 1992. This Convention contains provisions on the recognition and enforcement of judgments. According to this Convention, people's courts may recognise and enforce the judgments about civil liability of oil pollution damage delivered by courts of the countries participating in this Convention. As of March 2021, China has signed with 39 countries judicial assistance treaties containing content about the recognition and enforcement of civil judgments (37 of which have entered into force).
 - b. People's courts review, under the principle of reciprocity, foreign courts' civil and commercial judgments that are not prescribed by treaties.

⁹⁵ See Article 281 and 282, *Civil Procedural Law of the People's Republic of China*.

- c. Concluding, after a review in accordance with an international treaty or the principle of reciprocity, that there is no violation of the basic principles of the PRC law, national sovereignty or security or social public interest, the people's court will issue an order to recognise a foreign judgment's effect, and issue an enforcement order, if enforcement is needed, to enforce it pursuant to the relevant provisions of CPL. Enforcement will be rejected in the event of violation of the basic principles of the PRC law, national sovereignty or security or social public interest.

The statutory procedures for recognition and enforcement

Channels of application

3. A party directly applies to an intermediate people's court with jurisdiction in PRC for recognition and enforcement.
4. A foreign court requests a people's court for recognition and enforcement in accordance with the provisions of an international treaty entered or participated by that country and the PRC, or the principle of reciprocity.⁹⁶

Distinction between the recognition and enforcement procedure

5. People's courts' recognition and enforcement of foreign courts' civil and commercial judgments are divided into two procedures, "Recognition" and "Enforcement". First, under the recognition procedure, the effect of a recognizable foreign judgment is recognised with an order. Second, under the enforcement procedure, based on the recognition of a foreign court's judgment, an enforcement order is issued for the foreign court's judgment that needs enforcement, which will be enforced in the way by which a Chinese court judgment would be enforced. Where a judgment needs enforcement by a people's court, the party shall first apply to the people's court for recognition. Where an application is made only for recognition but not enforcement, the people's court will only review it and order on whether recognition is awardable.⁹⁷

Application period

6. Application period for the recognition and enforcement of foreign courts' judgments is two years. The suspension and resetting of its statute of limitations are governed by the provisions on the suspension and resetting of statute of limitations under the PRC law.
7. Where an application is made only for recognition but not enforcement, the application period for enforcement is reset upon the date the people's court's order on recognition application takes effect.⁹⁸

⁹⁶ See Article 281, *Civil Procedural Law of the People's Republic of China*.

⁹⁷ See Article 546, *Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of the People's Republic of China*.

⁹⁸ See Article 547, *Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of the People's Republic of China*.

Materials required to be submitted for an application

8. Where the PRC and the country in which the judgment was made have entered or both participated in an international treaty, and such international treaty prescribes the submitted documents, submission shall be made accordingly.
9. Where PRC and the country in which the judgment was made have not entered or both participated in an international treaty, or such international treaty exists but fails to prescribe the submitted documents, three documents shall be submitted:
 - a. application;
 - b. original copy or certified true photocopy and the Chinese translation of the judgment or order made by the foreign court;
 - c. documents proving that the foreign court has made legitimate summoning when the foreign court made the judgment or order by default, except that the same has been clearly stated in the judgment or order.⁹⁹

Effect of the order made by the people's court after review

10. An order made by the people's court after review becomes legally effective once serviced.¹⁰⁰
11. Where the application for recognition and enforcement is rejected with the order, the party may file a lawsuit to a people's court.¹⁰¹

Judicial practice on recognition and enforcement

12. In light of practical needs, the SPC makes judicial interpretations at appropriate time, constantly improves the procedures and review standards of recognition and enforcement, ensures the realization of foreign parties' legitimate rights and interests, and develops a stable, fair, transparent and predictable law-based business environment. In 2015, *Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of the People's Republic of China* was issued to elaborate on the CPL provisions on the recognition and enforcement of foreign courts' judgments. The SPC is drafting meeting minutes on the recognition and enforcement of foreign court's judgments, with a view to unifying adjudication criteria for such cases, and promoting the recognition and enforcement of foreign courts' judgments in China with a more open, flexible and accommodative stance.

⁹⁹ See Article 543, *Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of the People's Republic of China*.

¹⁰⁰ See Article 548, *Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of the People's Republic of China*.

¹⁰¹ See Article 544, *Interpretation of the Supreme People's Court on the Application of the Civil Procedural Law of the People's Republic of China*.

13. In its *Several Opinions on the People's Courts' Judicial Services and Protection for the Development of Belt & Road* issued in July 2015, the SPC expressly called for enhanced judicial assistance and facilitated mutual recognition and enforcement of judicial judgments of countries along the Belt & Road. Where the countries along the Belt & Road have not entered into judicial assistance agreement with China, but have undertaken to provide China with judicial reciprocity in keeping with the intention of international judicial cooperation and exchanges, it is conceivable for Chinese courts to first grant judicial assistance to the parties from such countries and proactively facilitate the formation of reciprocal relations. Adopted at the Second China-ASEAN Justice Forum held in Nanning, Guangxi on 8 June 2017, the Nanning Declaration emphasized that the courts of the attending countries would, to the extent permissible under their national laws, interpret national laws in good faith, reduce unnecessary parallel litigations, and appropriately promote the mutual recognition and enforcement of civil and commercial judgments of the various countries. In the judicial procedures of recognising and enforcing foreign courts' civil and commercial judgments of a country that has not entered into an international treaty on the recognition and enforcement of foreign civil and commercial judgments, a relationship of reciprocity may be assumed to exist with the foreign country to the extent permissible under the national law of the local country if the foreign country does not have a precedent of refusing, on the ground of reciprocity, to recognise and enforce the civil and commercial judgments of the local country.

Hong Kong SAR

1. The High Court of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (the HK High Court).
2. With respect to judgments of a jurisdiction other than the HKSAR ("foreign judgments") that may not be enforced under the statutory reciprocal enforcement regimes,¹⁰² they may be enforced at common law.
3. The common law permits an action to be brought upon a foreign judgment. That is to say, a foreign judgment itself may form the basis of a cause of action since the judgment may be regarded as creating a debt which the judgment debtor has a legal obligation to pay to the judgment creditor.
4. In HKSAR, a foreign judgment which may not be enforced under the statutory reciprocal enforcement regimes¹⁰³ is enforceable under common law if the following requirements are satisfied.
5. The judgment creditor has to prove that the foreign judgment is a final judgment conclusive upon the merits of the claim. It may be final and conclusive even though it is subject to an appeal.
6. The foreign judgment must be in the nature of a money award, i.e. for the payment of a debt or a definite sum of money, rather than an unliquidated sum or one that requires the judgment debtor to act in a particular way or to refrain from doing something. The HK High Court will not enforce a foreign decree for specific performance or certain types of money judgments, for example, judgments ordering the payment of taxes, or other charges of a like nature or in respect of a fine or other penalty.
7. The foreign court must have had jurisdiction, according to HKSAR's rules of the conflict of laws, to determine the subject matter of the dispute. The HK High Court will generally consider the foreign court to have had the required jurisdiction only where the person against whom the foreign judgment was given:
 - a. was, at the time the proceedings were commenced, present in the jurisdiction of the foreign court;
 - b. was a claimant, or counterclaimant, in the proceedings;
 - c. submitted to the jurisdiction of the foreign court; or
 - d. agreed, before commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court.

¹⁰² For instance, the Foreign Judgments (Reciprocal Enforcement) Ordinance (Chapter 319 of the Laws of Hong Kong) provides for reciprocal enforcement of judgments and awards in HKSAR and some Commonwealth jurisdictions and other foreign countries; and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Chapter 597 of the Laws of Hong Kong) gives effect to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland China and of the HKSAR. Where a foreign judgment falls within the statutory reciprocal enforcement regimes, it cannot be enforced at common law in the HK High Court.

¹⁰³ See footnote 1 above.

8. Moreover, the proceedings must not be brought in contravention of an agreement under which the dispute in question was to be settled otherwise than by proceedings in the foreign court, unless the person against whom the judgment was made in such circumstances brought the proceedings, made counterclaim in the proceedings, agreed to the bringing of the proceedings or otherwise submitted to the jurisdiction of the foreign court.
9. A foreign judgment satisfying all the above requirements may be challenged in the HK High Court only on limited grounds. Those grounds include but are not limited to where:
 - a. the judgment was obtained by fraud;
 - b. the judgment is contrary to the public policy of the HKSAR; or
 - c. the proceedings were conducted in a manner which the HK High Court regards as contrary to the principles of natural justice.
10. A foreign judgment does not have to originate from a common law jurisdiction in order to benefit from the common law rules set out above.
11. Neither is reciprocity a requirement under the common law. In other words, a judgment originating from a jurisdiction which does not recognise a HK High Court judgment may still be recognised and enforced by the HK High Court under common law provided that all the relevant requirements are met.

Outline of procedural steps

12. In order to enforce a foreign judgment in the HK High Court at common law, a party must commence an action in the HK High Court on the basis of the foreign judgment. An action is generally commenced by a Writ of Summons which must be served on the judgment debtor in accordance with the relevant provisions of the Rules of the High Court (Chapter 4A of the Laws of Hong Kong) (RHC).
13. Where the judgment debtor is outside the HKSAR, the judgment creditor, as plaintiff, must apply for leave to serve the Writ of Summons out of the jurisdiction in accordance with Order 11 of RHC. The application for leave is generally made without notice (*ex parte*) to a Master of the HK High Court and must be supported by an affidavit. The affidavit should include all relevant facts and exhibit a certified copy of the foreign judgment. The affidavit must state:
 - a. that Order 11, rule 1(1)(m) of RHC applies, that is, that the claim is made to enforce a foreign judgment, and any other grounds on which the application is made;
 - b. that in the deponent's belief, the plaintiff has a good cause of action; and
 - c. in what place the defendant is, or probably may be, found.
14. If, following service of the Writ of Summons, the judgment debtor does not respond to the claim, the judgment creditor will be entitled to obtain judgment in default under Order 13 of RHC. However, it remains open to the judgment debtor to dispute the jurisdiction of the HK High Court under Order 12, rule 8 of RHC.

15. If the judgment debtor acknowledges service of the Writ of Summons, the judgment creditor must file and serve a Statement of Claim (if he has not done so already), setting out in a summary form the material facts relied on in support of the claim. The Statement of Claim should contain a statement that the foreign court had jurisdiction on any of the grounds set out in paragraph 6 above. Upon being served with the Statement of Claim, the judgment debtor shall file and serve a Defence within the period specified in Order 18, rule 2 of RHC. After the Defence is filed, the action will proceed to trial according to the applicable rules of RHC.
16. If, following service of the Statement of Claim, the judgment debtor fails to file its Defence within the time prescribed by RHC, the judgment creditor may apply for judgment in default under Order 19, rule 2 of RHC. It should be noted that judgments in default obtained under Order 13 or Order 19 of RHC are liable to be set aside by the HK High Court.
17. In some cases, a judgment creditor may be entitled to apply to obtain summary judgment without trial under Order 14 of RHC, unless the judgment debtor can satisfy the HK High Court that there are issues to be tried in relation to one or more of the specified grounds¹⁰⁴ or that there ought for some other reason to be a trial. The application for summary judgment must be made by summons supported by an affidavit verifying the facts on which the claim is based and stating that in the deponent's belief there is no defence to that claim. A certified copy of the foreign judgment should be exhibited. Applications for summary judgment are dealt with swiftly, without the need for oral evidence. It should be noted that any judgment given against a party who does not appear at the hearing of an application for summary judgment may be set aside or varied by the HK High Court on such terms as it thinks just.
18. If the claim on the foreign judgment is successful, the judgment creditor will then have the benefit of a HK High Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the HKSAR Courts to enforce the judgment in the HKSAR, including seeking:
 - a. garnishee orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - b. charging orders, imposing charges over the judgment debtor's land and certain types of property in favour of the judgment creditor;
 - c. orders:
 - i. for sale of land over which the judgment creditor has the benefit of a charging order;
 - ii. requiring judgment debtor to provide information about his assets;
 - iii. appointing enforcement officers to seize and sell the judgment debtor's goods ("writs of fieri facias");
 - iv. appointing receivers;
 - v. for committal for contempt of court; or
 - vi. relating to insolvency procedures
19. The availability of any of the above modes of enforcement depends on the circumstances of each case and is subject to the relevant provisions in RHC and other applicable laws of the HKSAR.

¹⁰⁴ See generally paragraphs 7-8 above.

Japan

Foreign judgments for money are enforceable in Japan in the manner and under the circumstances specified by Civil Execution Act and Code of Civil Procedure.

Civil Execution Act

“(Title of Obligation)”

Article 22

Compulsory execution shall be carried out based on any of the following (hereinafter referred to as the “title of obligation”):

- vi. A judgment of a foreign court for which an execution judgment has become final and binding

(Execution Judgment for a Judgment of a Foreign Court)

Article 24

1. An action seeking an execution judgment for a judgment of a foreign court shall be under the jurisdiction of the district court having jurisdiction over the location of the general venue of the obligor, and when there is no such general venue, it shall be under the jurisdiction of the district court having jurisdiction over the location of the subject matter of the claim or the seizable property of the obligor.
2. An execution judgment shall be made without investigating whether or not the judicial decision is appropriate.

3. The action set forth in paragraph (1) shall be dismissed without prejudice when it is not proved that the judgment of a foreign court has become final and binding or when such judgment fails to satisfy the requirements listed in the items of Article 118 of the Code of Civil Procedure.
4. An execution judgment shall declare that compulsory execution based on the judgment by a foreign court shall be permitted.”

Code of Civil Procedure

“(Validity of a Final and Binding Judgment Rendered by a Foreign Court)”

Article 118

A final and binding judgment rendered by a foreign court is valid only if it meets all of the following requirements:

- i. the jurisdiction of the foreign court is recognised pursuant to laws and regulations, conventions, or treaties;
- ii. the defeated defendant has been served (excluding service by publication or any other service similar thereto) with the requisite summons or order for the commencement of litigation, or has appeared without being so served;
- iii. the content of the judgment and the litigation proceedings are not contrary to public policy in Japan;
- iv. a guarantee of reciprocity is in place.”

Guarantee of reciprocity

1. A guarantee of reciprocity is in place, as provided by Article 118, subpara.4 of the Code of Civil Procedure, meaning that in the country where the foreign court which rendered the judgment in question resides, judgments rendered by the courts of Japan that are of the same type as said judgment shall be effective on conditions that are not different in any material respect from those listed in Article 118 of the Code of Civil Procedure (Supreme Court 1994 (O) Case No.1838, Judgment of the third Petit Bench, April 28, 1998, Minshu 52-3-853).
2. Whether this requirement is fulfilled or not shall be investigated through the procedure in an action seeking an execution judgment for a judgment of a foreign court.

Kazakhstan

Astana International Financial Centre Court

1. While judgments of the AIFC Court are enforced in the Republic of Kazakhstan in the same way and on the same terms as judgments of the courts of the Republic of Kazakhstan, the AIFC Court does not have specific jurisdiction, nor is it expected, to enforce foreign money judgments.
2. Foreign judgments for money are enforceable by competent state courts of the Republic of Kazakhstan.
3. Article 501(1) of the Civil Procedure Code of the Republic of Kazakhstan provides that judicial orders of foreign courts are recognised and enforced by the courts of the Republic of Kazakhstan if recognition and enforcement is provided by legislation and/or an international treaty that has been ratified by the Republic of Kazakhstan, or on the basis of reciprocity.
4. Judgments of the courts in CIS countries are enforceable in the Republic of Kazakhstan in accordance with the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (22 January 1993 as amended 28 March 1997), and the Kiev Agreement between the CIS Countries on the Procedure for Settlement of Disputes Associated with Commercial Activities (20 March 1992).
5. Judgments of the courts of non-CIS countries are enforceable in the Republic of Kazakhstan in accordance with bilateral treaties. The Republic of Kazakhstan has ratified 12 bilateral treaties but none with West European or North American countries.¹⁰⁵
6. Absent an international treaty, parties may apply to the Ministry of Justice of the Republic of Kazakhstan for enforcement of a foreign judgment for money on the basis of reciprocity. The Ministry of Justice will consider on a case by case basis whether a foreign judgment for money shall be enforced. The laws of the Republic of Kazakhstan do not provide criteria for the Ministry of Justice to apply in such cases.

Outline of procedural steps:

7. Most international treaties regarding recognition and enforcement of foreign court judgments require the parties seeking enforcement within the Republic of Kazakhstan to file an application for enforcement directly with a competent court of the Republic of Kazakhstan.
8. Typically, the following list of documents is to be attached to the application for foreign judgment enforcement:
 - a. A copy of the judgments certified to the court.

¹⁰⁵ For example, the Republic of Kazakhstan has bilateral treaties for legal assistance in accordance with which it recognises and enforces court judgments from Lithuania, North Korea, Turkey, China, Vietnam, India, Pakistan, Mongolia, and the UAE.

- b. A document confirming that the judgment has entered into legal force and is subject to enforcement (or that the judgment is subject to enforcement prior to entering into legal force).
 - c. A document confirming that the party against which the judgment has been rendered was duly notified of the time and place of the court proceedings, if the party did not participate in the proceedings.
 - d. A document confirming the partial enforcement of the judgment, if any.
 - e. A document confirming agreement of the parties in cases over contractual jurisdiction.
 - f. A document confirming that an incapable party has been duly represented in the proceedings.
9. Some bilateral treaties provide for the right of the court receiving an application for judgment recognition and enforcement to request additional materials or explanations from the court that gave the judgment.
10. Some bilateral treaties do not provide for the applicant to directly file an enforcement application with the courts of the Republic of Kazakhstan. According to the Agreement on Legal Assistance with Lithuania, for example, the application for enforcement is to be filed in the court that gave the first instance judgment on the case, which is to forward the application to the court of the country where the judgment is to be enforced.
11. Judgments are enforced by the bailiff service provided by the Ministry of Justice (judgments against the Republic of Kazakhstan state or Republic of Kazakhstan state interests) and National Chamber of Law Enforcement Agents (judgments against other parties that are not the Republic of Kazakhstan state or Republic of Kazakhstan state interests). A court must order immediate execution of a judgment in some cases. In other cases, where non-execution of the judgment may harm the claimant, a court may order immediate execution upon the relevant request from the claimant.
12. After a judgment has entered into force, a writ of execution must be issued by the court and forwarded to the relevant bailiff service for execution. The writ of execution may be submitted for execution within three years from the date of entry into force of the relevant judgment and must be enforced within two months after the commencement of enforcement proceedings.
13. The Chairman of the Republic of Kazakhstan Supreme Court, the General Prosecutor and its deputies, acting on their own initiative or at the request of an interested party, may suspend the enforcement of a court decision for up to three months while the decision is being reviewed.
14. Typically, in accordance with the provisions of the bilateral treaties on legal assistance for mutual recognition and enforcement of foreign judgments, the recognition and enforcement of a judgment in the Republic of Kazakhstan may be refused by a court of the Republic of Kazakhstan if:
- a. The application for enforcement has not been timely and duly served on the defendant resulting in the defendant not participating in the proceedings;
 - b. The judgment has not entered into legal force and is not subject to enforcement;
 - c. The document confirming the parties' agreement on contractual jurisdiction has not been attached to the enforcement application;
 - d. The term for seeking enforcement of the judgment has expired; and
 - e. The recognition and enforcement of the judgment is contrary to the public policy of the Republic of Kazakhstan.

Korea, Republic of

Applicable regime

1. Presently, South Korea is not a signatory to the Hague Foreign Judgments Convention or any other bilateral or multilateral conventions on enforcement of foreign judgments. Absent such an applicable regime, the relevant provisions in the Korean Civil Procedure Act and the Korean Civil Execution Act apply with respect to the question of enforcement of civil or commercial judgment from a foreign state. These laws also serve as the basis for enforcing foreign monetary judgments in South Korea.

Basic procedure for enforcement

2. A plaintiff must first obtain an enforcement judgment (*exequatur*) from a South Korean court for the foreign judgment to enforce the judgment domestically. For an enforcement judgment, the jurisdiction requirement must be met first. A judgment creditor who desires to obtain an enforcement judgment can file an action in a Korean district court that has general jurisdiction over the judgment debtor. Alternatively, if courts lack jurisdiction, the competent court will be the district court, which has jurisdiction over the judgment debtor's assets.¹⁰⁶

3. Domestic civil proceedings rules apply to proceedings for enforcement judgments. Conversely, foreign judgments are enforced without any review of their merits.¹⁰⁷

Mandatory requirements for enforcement judgments

4. The Korean court will render an enforcement judgment when a foreign judgment meets all the following requirements stipulated in the Korean Civil Procedure Act:¹⁰⁸
 - a. Final and conclusive: The final and binding requirement requires that the judgment must be final and conclusive, and no longer subject to a court's ordinary review.
 - b. Jurisdiction: The Act requires that the foreign court had jurisdiction recognised under the principles of international jurisdiction pursuant to statutes or treaties of South Korea.
 - c. Service of process: The defeated defendant must be properly served with the complaint and the summons or any orders in advance, allowing him/her sufficient time to answer the claim. Where there was no service, it is adequate that the defendant responded to the lawsuit.

¹⁰⁶ Korean Civil Execution Act, Article 26(2). See, Korean Civil Procedure Act, Article 2, *et seq.* for the jurisdiction of the courts.

¹⁰⁷ Korean Civil Execution Act, Article 27(1).

¹⁰⁸ Korean Civil Execution Act, Article 27(2) and Korean Civil Procedure Act, Article 217(1).

- d. Public policy: The recognition of the judgment must not be contrary to the public policy of South Korea.
- e. Reciprocity: This requires that the foreign state where the foreign judgment was rendered to provide reciprocal treatment to Korean judgments.

5. The court is required to examine the compliance with these conditions *ex officio*.¹⁰⁹ In addition, if the lawsuit for enforcement judgment fails to fulfil the conditions under the Korean Civil Execution Act, Article 217, the court must dismiss the case.¹¹⁰

Final and conclusive judgments

6. A Korean court will only enforce a foreign judgment that is final and conclusive. Accordingly, a non-final judgment that is pending before a court in the foreign court system does not constitute a judgment that can be enforced in Korean courts.¹¹¹ Other non-enforceable remedies include interim reliefs, such as preliminary injunctions.

Jurisdiction of the foreign court

7. The foreign court is required to have had jurisdiction to adjudicate the case in question. Whether jurisdiction exists is typically decided by referring to domestic laws or international treaties of South Korea. In the absence of specific provisions in the law on direct international jurisdiction, the Korean Supreme Court's decision provides guidance on possible grounds of jurisdiction. The Court stated that in determining jurisdiction, "courts should

consider not only the interests of individuals such as fairness, conveniences, and predictability of the litigating parties but also the interests of the courts and the state such as justice, promptness, efficiency and effectiveness of court decisions."¹¹² Further, Korean courts should also take into account the reasonable principles in conformity with the objective test, i.e. whether there is a substantial connection between the parties and the forum, and between the dispute and the forum.¹¹³

Timely and proper service

8. The defeated defendant must have been served with proper service of process in accordance with the law of the foreign jurisdiction. A foreign judgment is considered unenforceable if a defendant was served by a public notice or similar methods of service. To allow the defendant sufficient time to prepare for a defence, the service of process should have been served in advance. If a defendant had the opportunity to defend in a foreign proceeding despite a defective service, the defendant would be deemed to have responded to the lawsuit.¹¹⁴

¹⁰⁹ Korean Civil Procedure Act, Article 217(2).

¹¹⁰ Korean Civil Execution Act, Article 27(2).

¹¹¹ Korean Civil Execution Act, Article 27(2)(i) and Korean Civil Procedure Act, Article 217(1).

¹¹² Korean Supreme Court Decision 2002da59788 (Decided on Jan. 27, 2005).

¹¹³ *Id.*

¹¹⁴ Korean Supreme Court Decision 2015da207747 (Decided on Jan. 28, 2016).

Public policy

9. The courts will examine the foreign judgment for consistency with South Korea's public policy and may refuse to enforce a foreign judgment that contravenes said policy. While this ground for refusal is available, Korean courts have construed it narrowly, and nearly no cases have applied such a ground. When the consistency of public policy is examined, the principle of the prohibition to re-examine the merits of a case (*révision au fond*) still applies.¹¹⁵ In addition, a judgment obtained by fraud violates South Korea's public policy and is not enforceable.¹¹⁶
10. With respect to foreign judgments on damages that are inconsistent with the basic principles of South Korean laws or treaties to which South Korea is a party, courts should refuse to enforce the judgment in whole or in part.¹¹⁷ This ground can be applied when punitive damages were awarded in a foreign judgment. However, the enforcement of a foreign judgment that awards compensatory damage will not be refused based on Article 217-2(1) of Korean Civil Procedure Act.¹¹⁸

Reciprocity

11. The foreign jurisdiction's reciprocity of treatment of Korean judgments should be ensured. The reciprocity condition is satisfied if the foreign court enforces Korean judgments under conditions that do not differ substantially from that of South Korea in any material respect. Note that an actual case in which a Korean judgment has been enforced in a foreign jurisdiction or a legal instrument that guarantees reciprocity between two countries is unnecessary.¹¹⁹ Further, the Korean Supreme Court maintains a liberal approach with respect to the reciprocity requirement.¹²⁰

¹¹⁵ Korean Supreme Court Decision 2015Da1284 (Decided on Oct. 15, 2015).

¹¹⁶ Korean Supreme Court Decision 2002Da74213 (Decided on Oct. 28, 2004).

¹¹⁷ Korean Civil Procedure Act, Article 217-2(1).

¹¹⁸ Korean Supreme Court Decision 2015Da1284 (Decided on Oct. 15, 2015).

¹¹⁹ Korean Supreme Court Decision 2015Da207747 (Decided on Jan. 28, 2016).

¹²⁰ *Id.* and Korean Supreme Court Decision 2012Da23832 (Decided on May 30, 2017).

Malaysia

1. In Malaysia, the enforcement of foreign judgments in commercial matters is primarily governed by legislation. Where there is no governing legislation, resort may be had to the common law. The relevant statute is the Reciprocal Enforcement of Judgments Act 1958 (REJA) which applies to registration of final and conclusive monetary judgments made by superior courts of reciprocating countries.¹²¹
2. The requirements for a foreign judgment to fall within the scope of REJA are as follows (see section 3(3) of REJA):
 - a. It is a judgment of a superior court other than a judgment of such a court given on appeal from a court which is not a superior court.
 - b. It is final and conclusive.
 - c. It is a monetary judgment (not a sum payable in respect of taxes or other charges or fine or penalty).
 - d. It is a judgment from a country or territory in the First Schedule of REJA and the judgment was given after the relevant country or territory was added to the First Schedule.
3. To date, the jurisdictions listed in the First Schedule of REJA as reciprocating countries are:
 - a. The United Kingdom, namely:
 - i. The High Court in England
 - ii. The Court of Session in Scotland
 - iii. The High Court in Northern Ireland
 - iv. The Court of Chancery of the County Palatine of Lancaster
 - v. The Court of Chancery of the County Palatine of Durham
 - b. The High Court of the Hong Kong Special Administrative Region of the People's Republic of China
 - c. The High Court of Singapore
 - d. The High Court of New Zealand
 - e. The High Court and District Courts of Republic of Sri Lanka (Ceylon)
 - f. The High Court of India (excluding the State of Jammu and Kashmir, the State of Manipur, tribal areas of the State of Assam, and scheduled areas of the States of Madras and Andhra)
 - g. The High Court of Brunei Darussalam

¹²¹ Legislation governing matrimonial and estate matters are:

- a. The Maintenance Orders (Facilities for Enforcement) Act 1949 (MOFEA) applies to the registration of orders for maintenance payments in a matrimonial relationship made by courts of reciprocating countries; and
- b. Probate and Administration Act 1959 (PBA) applies to the re-sealing of a grant of probate of letter of administration issued by a court of a Commonwealth country.

4. Section 9(1) of REJA provides that the King (the Yang di-Pertuan Agong of Malaysia) may order that the First Schedule be amended to remove a reciprocating country where the treatment in respect of recognition and enforcement accorded by their courts to a judgment of the Malaysian courts is less favourable than that accorded by the Malaysian courts to judgments of that country.
5. Enforcement under REJA is by way of registration in the High Court. Section 4(2) of REJA provides as follows:
 - a. A registered judgment shall, for the purposes of execution, be of the same force and effect.
 - b. Proceedings may be taken on a registered judgment.
 - c. The sum for which a judgment is registered shall carry interest.
 - d. The registering court shall have the same control over the execution of a registered judgment; as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.
6. The court will not register a foreign judgment if at the date of the application for registration, it has been wholly satisfied or it could not be enforced by execution in the country of the original court (see the proviso to section 4(1) of REJA).
7. If, at the date of the application for registration, the foreign judgment has been partly satisfied, the judgment shall not be registered in respect of the whole judgment sum but only in respect of the balance remaining payable at that date (see section 4(4) of REJA).
8. Any party against whom a registered judgment may be enforced may apply to have it set aside on the following grounds (see section 5 of REJA):
 - a. It was registered in contravention of REJA.
 - b. The courts of the country of the original court had no jurisdiction in the circumstances of the case.
 - c. The judgment debtor (defendant in the original proceedings) did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear.
 - d. It was obtained by fraud;
 - e. It was contrary to public policy.
 - f. The rights under the judgment are not vested in the person by whom the application for registration was made.
9. Where there is no enabling statutory legislation, a foreign judgment would still be enforceable under the common law. However, a fresh suit would have to be initiated in court as an action on a debt to obtain a judgment of the Malaysian courts to be enforced. (See section 8(1) of REJA.) Summary judgment may be applied for in order to expedite obtaining judgment.
10. The methods of enforcement available include the following:
 - a. Seizure and sale.
 - b. Examination of the judgment debtor;
 - c. Garnishee proceedings.
 - d. Charging order in respect of shares held by the judgment debtor.
 - e. Bankruptcy or winding up proceedings.

Outline of procedural steps

11. The procedure for the registration of a foreign judgment under REJA is stipulated in Order 67 of the Rules of Court 2012 (RC). This is done by way of filing of an originating summons supported by affidavit. The affidavit must exhibit the judgment (or a verified or certified or otherwise duly authenticated copy). If the judgment is not in English, a translation certified by a notary public or authenticated by affidavit must be supplied.
12. In practice, the hearing is conducted ex parte and the court will grant leave to register the foreign judgment if the application for registration complies with REJA.
13. The order for leave will state the period within which an application may be made by the judgment debtor to set aside the registration. Execution will not be carried out until this period expires. (See Order 67 rule 5(2) RC.)
14. The judgment sum must be registered as if it were a judgment for Malaysian currency. Therefore the judgment sum shall be converted to its Malaysian Ringgit equivalent on the basis of the exchange rate prevailing at the date of the judgment of the original court (see section 4(3) of REJA).
15. The application for registration of a foreign judgment must be brought within six years after the date of the judgment (see section 4(1) of REJA).
16. For common law enforcement of a foreign judgment, as stated above, a fresh action has to be brought. This will either be by filing of a writ of summons and statement of claim, or by filing an originating summons with a supporting affidavit. An application for summary judgment, supported by affidavit, may also be filed to expedite matters where the defendant has no defence.
17. The limitation period for the common law enforcement of a foreign judgment is 12 years from the date on which the judgment became enforceable. No arrears of interest in respect of the judgment debt may be recovered after six years from the date on which the interest became due. (See section 6(3) of the Limitation Act 1953.)

The Philippines

1. Except for the Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹²² the Philippines is not a party to any other treaty regarding the recognition and enforcement of foreign judgments.
2. Philippine case law recognises that recognition and enforcement of foreign judgments are part of the generally accepted principles of international law.¹²³ A judgment or a final order of a foreign court, however, cannot simply be enforced through execution. This is because a foreign judgment only creates a right of action between the parties, “and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement.”¹²⁴
3. The primary source of law for the enforcement of foreign judgments is Article VIII, Section 5(5) of the 1987 Constitution,¹²⁵ which refers to the Philippine Supreme Court’s power to promulgate rules concerning pleading, practice, and procedure in all courts.
4. Specifically, an action for the recognition and enforcement of a foreign judgment is governed by Rule 39, Section 48 of the Rules of Court. The rule distinguishes between an action in rem and one in personam. For actions in rem, the foreign judgment is deemed “conclusive upon the title to the thing.” For actions in personam, the foreign judgment “is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title”.
5. An important principle in the enforcement of foreign judgments is that Philippine courts do not take judicial notice of foreign laws, whether procedural or substantive. The party seeking to enforce the foreign judgment must prove foreign law as a fact. Otherwise, the doctrine of processual presumption will apply. Courts will presume that foreign law is identical to Philippine law and will apply the latter.¹²⁶

¹²² Otherwise known as the New York Convention.

¹²³ *Mijares v. Rañada*, 495 Phil. 372 (2005) [Per J. Tinga, Second Division].

¹²⁴ *Bank of the Philippine Islands Securities Corporation v. Guevara*, G.R. No. 167052, March 11, 2015 [Per J. Leonardo-De Castro, First Division].

¹²⁵ Const., art. VIII, sec. 5(5): SECTION 5. The Supreme Court shall have the following powers:

a. (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

¹²⁶ See *Puyat v. Zabarte*, G.R. No. 141536, February 26, 2001.

6. The foreign judgment must be final and executory before an action for its recognition and enforcement can be commenced. This means that the foreign judgment should no longer be appealable to another body or tribunal.
7. An action for the recognition and enforcement of a foreign judgment must be brought before the Regional Trial Courts, which are deemed courts of general jurisdiction.¹²⁷
8. The prescriptive period for the enforcement of a foreign judgment is 10 years from the date of finality of the foreign judgment.¹²⁸
9. A foreign judgment can be impeached on the following grounds: (1) lack of jurisdiction; (2) lack of notice to the party; (3) collusion; (4) fraud; or (5) clear mistake of law or fact.¹²⁹ Aside from these grounds, a foreign judgment that is contrary to public policy may be repelled.¹³⁰
10. When the party seeking the enforcement of a foreign judgment obtains a favourable decision, the foreign judgment may be subject to the issuance of a writ of execution, which issues as a matter of right. The ordinary procedure outlined in Rule 39 of the Rules of Court for execution and satisfaction of judgment will apply. Judgments for money can be enforced in three ways:
 - a. First, the sheriff shall enforce the execution of a judgment for money by demanding immediate payment from the judgment debtor. The judgment debtor can either pay in cash, check, or any other mode of payment acceptable to the judgment creditor.¹³¹
 - b. If the judgment debtor cannot pay all or part of the obligation through cash, check, or any other mode of payment acceptable to the judgment creditor, then the judgment debtor's properties may be levied upon.¹³²
 - c. The last mode is through garnishment of debts and credits owing to the judgment debtor.¹³³

¹²⁷ Batas Pambansa Blg. 129, sec. 19(6).

¹²⁸ Civil Code, art. 1144(3).

¹²⁹ Rules of Court, Rule 39, sec. 48.

¹³⁰ Civil Code, art. 17.

¹³¹ Rules of Court, Rule 39, sec. (9)(a).

¹³² Rules of Court, Rule 39, sec. (9)(b).

¹³³ Rules of Court, Rule 39, sec. (9)(c).

Singapore

1. The Supreme Court of Singapore is a superior court of law. It comprises the Singapore High Court and the Singapore Court of Appeal. The Singapore International Commercial Court is a division of the Singapore High Court and part of the Supreme Court of Singapore.

The requirements for enforcing foreign judgments in the Supreme Court of Singapore

2. Singapore is party to the 2005 Hague Convention on Choice of Court Agreements (Hague Convention). Generally, parties to the Hague Convention are required to recognise and enforce each other's court judgments arising out of international cases involving exclusive choice of court agreements concluded in civil or commercial matters, subject only to limited grounds for refusing recognition and enforcement. Singapore is also party to a number of binding bilateral arrangements in relation to which judgments from a number of foreign jurisdictions may be recognised and enforced in the Supreme Court of Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265).
3. In the absence of a relevant treaty or a binding bilateral arrangement, a foreign judgment may be enforced in the Supreme Court of Singapore by a claim made at common law.
4. Where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another (i.e. a money judgment), a legal obligation arises on the debtor to pay that judgment debt. This legal obligation to pay is separate from the underlying cause of action that gave rise to the judgment. The creditor may then bring a claim at common law to enforce that obligation as a debt.
5. The foreign judgment must be final and conclusive on the merits of the case, and for a fixed or ascertainable sum of money. The fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive.
6. The Supreme Court of Singapore will not enforce a foreign judgment which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law, or that orders the person against whom the judgment was given to do anything else apart from the payment of the judgment sum.

7. The court of the foreign judgment ("the foreign court") must have had jurisdiction, according to the conflict of laws rules determined to be applicable by the Supreme Court of Singapore, to determine the subject matter of the dispute. The Supreme Court of Singapore will generally consider the foreign court to have had the required jurisdiction only where the person against whom the judgment was given:
 - a. was, at the time the proceedings were commenced, present or resident in the country of the foreign court;
 - b. was the claimant, or counterclaimant, in the proceedings;
 - c. submitted to the jurisdiction of the foreign court; or
 - d. agreed, before commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court.
8. Where the above requirements are established to the satisfaction of the Supreme Court of Singapore, the foreign judgment may be challenged in the Supreme Court of Singapore only on limited grounds. Those grounds include, but are not limited to:
 - a. where the foreign judgment was procured by fraud;
 - b. where the enforcement of the foreign judgment would be contrary to Singapore public policy; and
 - c. where the proceedings in which the foreign judgment was obtained were conducted in a manner which the Supreme Court of Singapore regards as contrary to the principles of natural justice.
9. The Supreme Court of Singapore will not re-examine the merits of a foreign judgment. The foreign judgment may not be challenged on the grounds that it contains an error of fact or law. A foreign judgment will be enforced on the basis that the judgment debtor has a legal obligation, recognised by the Supreme Court of Singapore, to satisfy a judgment of the foreign court.

The procedure for enforcement of foreign judgments in the Supreme Court of Singapore

10. In order to enforce a foreign judgment in the Supreme Court of Singapore, the judgment creditor must commence an action by filing a writ of summons in the Supreme Court of Singapore, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the writ.
11. Where the judgment debtor is outside of Singapore, the judgment creditor will have to seek the leave of court to serve the writ out of jurisdiction in accordance with Order 11 of the Singapore Rules of Court. The application for leave should be supported by an affidavit:
 - a. exhibiting a certified copy of the foreign judgment;
 - b. stating that the claim is brought to enforce a judgment of the relevant foreign court (see Order 11, Rule 1(m) of the Singapore Rules of Court);
 - c. stating that the judgment creditor believes that it has a good cause of action; and
 - d. stating the place or country the judgment debtor is, or probably may be found.

12. If, following service, the judgment debtor does not respond to the claim by entering an appearance, the judgment creditor will be entitled to obtain judgment in default of appearance under Order 13 of the Singapore Rules of Court.
13. If the judgment debtor acknowledges service and enters an appearance, the judgment creditor must file and serve a statement of claim setting out the material facts which are relied upon for the claim, and the necessary particulars of the claim.
14. In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Order 14 of the Singapore Rules of Court, unless the judgment debtor can show that there is a triable issue in relation to a defence, which include, but are not limited to, the grounds set out in paragraph 8 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
15. If the claim on the foreign judgment is successful, the judgment creditor will then have the benefit of a judgment of the Supreme Court of Singapore. The judgment creditor will be entitled, if necessary, to use the procedures of the Supreme Court of Singapore to enforce the judgment under Order 45 of the Singapore Rules of Court.

Related information on enforcement of judgments

Information relating to the enforcement of Singapore International Commercial Court judgments can be found in the *Note on Enforcement of SICC Judgments* which is available on its official website at: https://www.sicc.gov.sg/documents/docs/SICC_Enforcement_Guide.pdf.

Sri Lanka

1. The Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921 provides for the enforcement of foreign judgments for money in Sri Lanka. Under the said Ordinance, foreign judgments may be enforced through the District Court. Prior to enforcement, applications must be made to register the foreign judgments in the District Court of Colombo.

Definition of a judgment

2. The Act defines a judgment as any judgment, decree or order whereby a sum of money is made payable. The definition also includes an arbitral award if the law where the award is made provides that it may be enforced in the same manner as a judgment. However, after the enactment of the Arbitration Act No. 11 of 1995, arbitral awards may only be enforced through the High Court of Colombo.

Procedure for registration

3. To enforce a foreign judgment, the judgment-creditor shall apply to the District Court within 12 months after the date of judgment. The Ordinance stipulates that a longer period may be allowed by the court at its discretion.
4. The court will register an application for the registration of a foreign judgment if the court thinks that it is just and convenient that the judgment be enforced in Sri Lanka.

Grounds for refusal of registration

5. The District Court cannot consider the merits of the original case during the application for registration.¹³⁴ Grounds for refusal of registration are specified in Section 3(2) of the Ordinance; such grounds include when the foreign court acted without jurisdiction, the judgment was obtained by fraud or the judgment was in respect of a cause of cause of action that was contrary to public policy.
6. Moreover, registration/execution of a foreign judgment will be refused if the judgment debtor, being the defendant in the proceedings, was not duly served with summons. The aforementioned due service of summons to a defendant residing in Sri Lanka, is governed by the Mutual Assistance in Civil and Commercial Matters Act No. 39 of 2000. In such an instance, the relevant foreign court must request assistance for the service of summons from the Secretary to the Ministry of Justice and the Secretary should send such summons to the District Court within the jurisdiction of which such person is residing. Once the summons is served on the defendant, the District Court will send a certificate to the foreign court setting out the mode, place and date of service and, where possible, attach an acknowledgement signed by the recipient of the summons.

¹³⁴ *Plexus Cotton Ltd v Dan Mukunthan* CA 1865/2005 (Revision) and CA 1866/2005 (Revision).

7. The serving of summons or informing of a pending case in a foreign court by any other means will not be considered as a fulfilment of the requirements of serving summons in terms of the Mutual Assistance in Civil and Commercial Matters Act No. 39 of 2000. In such circumstances, the District Court will refuse to enforce foreign judgments for non-compliance with the said Act.
8. Moreover, registration will be refused if the judgment-debtor satisfies the District Court that an appeal is pending or that he is entitled to an appeal and intends to do so against the foreign judgment sought to be enforced.
9. Further, the court has the power to suspend the execution of a registered foreign judgment.

Effect of registration

10. Once registered, a foreign judgment will have the same force and effect as a judgment delivered in Sri Lanka. As such, the District Court would have the same control and jurisdiction over the execution of the judgment as it would a domestic judgment.





Australasia

Australia

(Federal, New South Wales and Victoria)

1. Foreign judgments for money are enforceable in Australia under either the *Foreign Judgments Act 1991* (Cth) and the *Foreign Judgments Regulations 1992* (Cth) or, in circumstances where the statutory regime is not applicable, under the common law.
2. There is a separate scheme for the enforcement of New Zealand judgments, as detailed in the *Trans-Tasman Proceedings Act 2010* (Cth).
3. It is important to note at the outset that Australia's federal system means that parties can seek to enforce judgments in both Federal and State courts. In each case, the main approach is to rely upon a relevant treaty¹³⁵ or the statutory regime where possible, and to turn to common law principles in the absence of such a relevant treaty or where the foreign court is not one to which the *Foreign Judgments Act 1991* (Cth) applies.
4. This summary relates to the Supreme Courts of New South Wales and Victoria and the Federal Court of Australia. The recognition and enforcement of foreign judgments is governed by the national legislation referred to above. The procedure is substantially uniform across the country.
5. Thus enforcement may be pursued in different courts. Each court has its own methods of processing such applications, but the national structure and law applicable for enforcement of foreign judgments is identical at both the federal and state level.

Enforcement under the Foreign Judgments Act

6. *The Foreign Judgments Act* and *Foreign Judgments Regulations* form an Australian-wide statutory regime to facilitate the registration and enforcement of judgments made in foreign countries. To some extent, this statutory regime has replaced the procedure for such recognition under common law.
7. The legislation is, however, only applicable to jurisdictions in respect of which there is reciprocal treatment in their superior courts (and specified inferior courts). That is, the enforcement procedure under the *Foreign Judgments Act* only applies to money judgments given on or after the date the *Foreign Judgments Act* was extended, by regulations, to a particular country and particular courts of that country.¹³⁶

¹³⁵ For example, Australia is part to the bilateral treaty for the *Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters 1994* with the United Kingdom.

¹³⁶ *Foreign Judgments Act 1991* (Cth), s 5. See sch 2 and reg 5 of the *Foreign Judgments Regulations 1992* (Cth) for a list of countries and courts to which the *Foreign Judgments Act* applies.

8. A judgment creditor must apply to the Court to have the foreign judgment registered as a judgment of the Court.¹³⁷ This must occur within six years after the date of judgment or, if there has been an appeal process, the date of the last judgment in the proceedings.¹³⁸
9. For a money judgment to be registrable under the *Foreign Judgments Act*, it must:
 - a. be final and conclusive;¹³⁹
 - b. be given in a court to which the *Foreign Judgments Act* applies;¹⁴⁰
 - c. not have been wholly satisfied, though a partially satisfied judgment can be registered to the extent of the balance remaining payable;¹⁴¹
 - d. be enforceable in the country of the original court;¹⁴² and
 - e. not relate to an amount payable in respect of taxes, charges, fines or other penalties unless relating to New Zealand tax or Papua New Guinea income tax.¹⁴³
10. A judgment registered under the *Foreign Judgments Act* has the same force and effect as if the judgment had been originally given in the Australian court in which it is registered.¹⁴⁴
11. If the requirements of registration are met, there is no discretion whether or not to register the judgment.¹⁴⁵ However, registration of a foreign money judgment must be set aside where:¹⁴⁶
 - a. the judgment is not one to which the *Foreign Judgments Act* applies;
 - b. the judgment was registered for an amount greater than the amount payable at the date of registration;
 - c. the judgment was registered in contravention of the *Foreign Judgments Act*;
 - d. the courts of the country in which the judgment was made had no jurisdiction;
 - e. the judgment debtor did not receive notice of the foreign proceedings in sufficient time to defend those proceedings and did not appear;
 - f. the judgment was obtained by fraud;
 - g. the judgment has been reversed on appeal or otherwise set aside by the courts of the country of origin;
 - h. the rights in the judgment are not vested in the person by whom the application for registration was made;
 - i. the judgment has been discharged;
 - j. the judgment has been wholly satisfied; or
 - k. the enforcement of the judgment, if not a judgment for New Zealand tax, would be contrary to public policy.¹⁴⁷

¹³⁷ *Foreign Judgments Act* 1991 (Cth), s 6(1).

¹³⁸ The period within which an application can be made may also be extended by Court order: *Foreign Judgments Act* 1991 (Cth), s 6(5).

¹³⁹ *Foreign Judgments Act* 1991 (Cth), s 5(4)(a).

¹⁴⁰ *Foreign Judgments Act* 1991 (Cth), s 5(4)(b).

¹⁴¹ *Foreign Judgments Act* 1991 (Cth), ss 6(6)(a), 6(12).

¹⁴² *Foreign Judgments Act* 1991 (Cth), s 6(6)(b).

¹⁴³ *Foreign Judgments Act* 1991 (Cth), s 3.

¹⁴⁴ *Foreign Judgments Act* 1991 (Cth), s 6(7).

¹⁴⁵ *Foreign Judgments Act* 1991 (Cth), s 6(3).

¹⁴⁶ *Foreign Judgments Act* 1991 (Cth), s 7(2)(a).

¹⁴⁷ See *Jenton Overseas Investment Pte Ltd v Townsing* (2008) 21 VR 241 in which Whelan J dismissed an application pursuant to s 7(2)(a)(xi) of the *Foreign Judgments Act* that an order for registration be set aside on the ground that enforcement of the judgment would be contrary to public policy. His Honour noted (at [20]) that courts will be slow to apply public policy as a basis for refusing recognition and enforcement of foreign judgments because of the importance of comity with foreign courts, the need for respect and recognition of the institution of foreign States, particularly where there is reciprocity of treatment of judgments and because the concept of public policy is inherently fluid.

12. Registration may also be set aside if the court is satisfied that the matter in dispute in the proceedings in the original court had before the date of judgment been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.¹⁴⁸

Enforcement at common law

13. For countries to which the *Foreign Judgments Act* does not apply, the common law governs enforcement. Under the common law, where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum. The creditor may bring a claim to enforce that obligation as a debt.
14. A foreign money judgment is enforceable at common law in Australia where:¹⁴⁹
- the foreign court exercised a jurisdiction that Australian courts recognise, which will generally require the presence of the respondent to the enforcement proceedings in the foreign jurisdiction at the time or their voluntary submission to the jurisdiction of the foreign jurisdiction;
 - the judgment is final and conclusive;¹⁵⁰
 - the judgment is for a fixed sum; and
 - the parties are the same as those to the enforcement proceeding.
15. Reciprocity of treatment of Australian judgments in the foreign jurisdiction is not a requirement for enforcement at common law.¹⁵¹
16. To enforce such a judgment at common law, it is necessary for the judgment creditor to commence a new action in Australia for the judgment sum. It may be an action for the liquidated sum relying upon the foreign judgment, or a new action on the original cause of action pleading the foreign judgment as an estoppel to any defence raised by the judgment debtor.¹⁵² It is likely that summary judgment can be obtained.¹⁵³ Once judgment is obtained, it can be enforced in the same way as any other judgment given by that Australian court.
17. Defences are available at common law to enforcement of a foreign money judgment if the foreign judgment:¹⁵⁴
- was obtained by fraud;¹⁵⁵
 - is contrary to Australian public policy;¹⁵⁶
 - was obtained in circumstances where the foreign court denied procedural fairness;¹⁵⁷
 - is penal in nature or relates to taxation;¹⁵⁸ or
 - cannot be enforced due to an estoppel arising out of a prior judgment occurring within Australia.¹⁵⁹

¹⁴⁸ *Foreign Judgments Act 1991* (Cth), s 7(2)(b).

¹⁴⁹ See M Davies, AS Bell, PLG Brereton, *Nygh's Conflict of Laws in Australia* (LexisNexis, 9th ed, 2014) at [40.1]–[40.20], [40.30]–[40.37].

¹⁵⁰ A foreign judgment may be final and conclusive even if it is subject to an appeal.

¹⁵¹ *Crick v Hennessey* [1973] WAR 74; *Felixstowe Dock & Railway Co v United States Lines Inc* [1989] QB 360.

¹⁵² *RDCW Diamonds v Da Gloria* [2006] NSWSC 450.

¹⁵³ *RDCW Diamonds v Da Gloria* [2006] NSWSC 450.

¹⁵⁴ See generally M Davies, AS Bell, PLG Brereton, *Nygh's Conflict of Laws in Australia* (LexisNexis, 9th ed, 2014) at [40.62]–[40.97].

¹⁵⁵ *Benefit Strategies Group Inc v Prider* (2005) 91 SASR 544.

¹⁵⁶ *Benefit Strategies Group Inc v Prider* (2005) 91 SASR 544. See also *Jenton Overseas Investment Pte Ltd v Townsing* (2008) 21 VR 241.

¹⁵⁷ *Federal Treasury Enterprise (FKP) Sojuzplodoimport v Spirits International BV* (No 3) [2013] FCA 85.

¹⁵⁸ See M Davies, AS Bell, PLG Brereton, *Nygh's Conflict of Laws in Australia* (LexisNexis, 9th ed, 2014) at ch 18.

¹⁵⁹ *Vervaeke v Smith* [1983] 1 AC 145.

18. However, the courts will not re-examine the merits of a foreign judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A foreign judgment will be enforced on the basis that the defendant has a legal obligation, recognised by the Court, to satisfy a judgment of that foreign court.

Enforcement under the Trans-Tasman Proceeding Act 2010 (Cth)

19. *The Trans-Tasman Proceeding Act 2010* (Cth) provides for the enforcement in Australia of both money and non-money judgments of New Zealand.¹⁶⁰ This Act contains more limited grounds for setting aside money judgments than under the statutory regime that applies to other countries.
20. A New Zealand judgment must only be set aside where:¹⁶¹
- enforcement would be contrary to Australian public policy;
 - the judgment was registered in contravention of this Act; or
 - the judgment was given in a proceeding that concerned immoveable property or was an in rem proceeding involving moveable property; and that property was not situated in New Zealand.

Methods of processing applications for the enforcement under the Foreign Judgments Act

Procedure in the Federal Court of Australia

21. In the Federal Court, judgments are enforced according to the following procedure:
- The party seeking enforcement must file an originating application accompanied by a copy of the foreign judgment (and a translation is required) and a supporting affidavit.¹⁶²
 - A further affidavit must be filed on the day of hearing attesting to various matters including, for a money judgment:¹⁶³
 - that the judgment has not been wholly satisfied
 - if partially satisfied, the balance remaining payable
 - the interest, if any, that has become due under the law of the country of original court up to the date of registration
 - if the amount payable under the judgment is not expressed in Australian dollars and the application does not seek registration in currency in which it is expressed, the equivalent amount in Australian currency, based on the rate of exchange prevailing on that day

¹⁶⁰ *Trans-Tasman Proceedings Act 2010* (Cth), pt 7.

¹⁶¹ *Trans-Tasman Proceedings Act 2010* (Cth), s 72.

¹⁶² *Federal Court Rules 2011* (Cth), r 41.62.

¹⁶³ *Federal Court Rules 2011* (Cth), r 41.63.

- c. A copy of the order of registration made by the Federal Court must be served on the judgment debtor personally and an affidavit of service must be served before any enforcement steps are taken.¹⁶⁴
- d. An application to set aside registration or stay enforcement may be made by a judgment debtor.¹⁶⁵
- e. Following registration, and service of the order of registration, the judgment may be enforced through any of the means of enforcement available to the Federal Court.

Procedure in the New South Wales Supreme Court

22. A registered foreign judgment may be enforceable in the same way as any other order of the New South Wales Supreme Court.¹⁶⁶ Once registered in New South Wales, the judgment creditor can enforce the judgment against assets located in other States or Territories within Australia.

23. A judgment creditor must issue a summons in the Commercial Division of the Court, joining the judgment creditor as plaintiff and the judgment debtor as defendant.¹⁶⁷ Unless the court orders otherwise, the judgment creditor may proceed without service of the summons on the judgment debtor.¹⁶⁸

- 24.** The application for registration of a judgment must be accompanied by the following supporting materials:¹⁶⁹
- a. The judgment or a certified copy of the judgment.
 - b. A translation of the judgment into English if the original judgment is not in English.
 - c. If relevant, a specification of the provisions of the judgment that are the subject of the application;
 - d. A specification of the amount originally payable under a money judgment.
 - e. Evidence showing of why the New South Wales Supreme Court is the appropriate court under s 6(1) of the *Foreign Judgments Act 1991* (Cth).
 - f. The name and trade or business, and the usual or last known residential or business addresses, of the judgment creditor and judgment debtor.
 - g. Evidence showing the entitlement of the judgment creditor to enforce the judgment.
 - h. Evidence showing that the judgment can be enforced by execution in the country of the original court at the date of the application and that the registration of the judgment would not be liable to be set aside.
 - i. Evidence as to any interest that may be payable.
 - j. Evidence as to the extent to which the judgment is unsatisfied.
 - k. Any other evidence as required by regulations made under the *Foreign Judgments Act 1991* (Cth).

¹⁶⁴ *Federal Court Rules 2011* (Cth) r 41.65.

¹⁶⁵ *Federal Court Rules 2011* (Cth), rr 41.66, 41.67.

¹⁶⁶ See s 6 of the *Foreign Judgments Act*.

¹⁶⁷ *Uniform Civil Procedure Rules 2005* (NSW), r 53.2(2).

¹⁶⁸ *Uniform Civil Procedure Rules 2005* (NSW), r 53.2(3).

¹⁶⁹ *Uniform Civil Procedure Rules 2005* (NSW), r 53.3.

- 25.** If, following service, the judgment debtor does not respond to the claim, the judgment creditor will be entitled to obtain judgment in default.¹⁷⁰ However, it remains open to the judgment debtor to challenge the jurisdiction of the New South Wales Supreme Court.
- 26.** In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial.¹⁷¹ Applications for summary judgment are dealt with swiftly, generally without the need for oral evidence. However, summary judgment will not be granted if the judgment debtor can satisfy the Court that it has a real prospect of establishing at trial one of the following grounds of challenging a foreign judgment in the New South Wales Supreme Court:
- The judgment was obtained by fraud.
 - The judgment is contrary to Australian public policy.
 - The proceedings were conducted in a manner which the New South Wales Supreme Court regards as contrary to the principles of natural justice.
- 27.** If the claim on the foreign judgment is successful, the judgment creditor will then have the benefit of New South Wales Supreme Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the Australian courts to enforce the judgment, including:¹⁷²
- third-party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - orders for possession of land;
 - orders for sale of land or other property over which the judgment creditor has the benefit of a charge;
 - orders requiring judgment debtors to provide information about their assets;
 - orders appointing enforcement officers to seize and sell the judgment debtor's goods;
 - orders appointing receivers;
 - orders for committal for contempt of court; and
 - orders relating to insolvency procedures.
- 28.** However, the judgment creditor may not take any step for enforcement of the judgment until an affidavit of service of the notice of registration is filed or the Court is otherwise satisfied that the rules as to service of the notice of registration have been complied with.¹⁷³ The judgment creditor may not, without the leave of the Court, take any step for enforcement before the expiry of the time within which the judgment debtor may apply for an order setting aside registration and any such application is disposed of.¹⁷⁴

Procedure in the Victorian Supreme Court

- 29.** A registered foreign judgment may be enforceable in the same way as any other Supreme Court of Victoria order.¹⁷⁵ Once registered in Victoria, the judgment creditor can enforce the judgment against assets located in other States or Territories within Australia.¹⁷⁶

¹⁷⁰ *Uniform Civil Procedure Rules 2005* (NSW), r 16.6.

¹⁷¹ See generally *Uniform Civil Procedure Rules* (NSW), pt 13.

¹⁷² See generally *Uniform Civil Procedure Rules* (NSW), pt 39.

¹⁷³ *Uniform Civil Procedure Rules 2005* (NSW), r 53.8(2).

¹⁷⁴ *Uniform Civil Procedure Rules 2005* (NSW), r 53.8(3).

¹⁷⁵ See s 6 of the *Foreign Judgments Act*.

¹⁷⁶ See *Re S A Cryonic Medical* [2002] VSC 338.

30. In order to enforce a judgment of a foreign court in the Victorian Supreme Court, the judgment creditor must bring a fresh action. A judgment creditor may either:
 - a. sue for the judgment amount as a debt; and/or
 - b. commence a new proceeding based on the same cause of action for which judgment was obtained in the foreign court.
31. The latter option enables the foreign judgment to create an estoppel which prevents the judgment debtor from relying on any defences that were available in the original proceeding in the foreign court.
32. The judgment creditor's application is governed by the procedure provided in *Order 11 of the Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic).
33. An application for registration can be made ex parte. The application must be made by originating motion and supported by an affidavit.¹⁷⁷ The affidavit must address the following matters on the basis of the deponent's information and belief:¹⁷⁸
 - a. The plaintiff is entitled to enforce the judgment.
 - b. The judgment is final and conclusive between the parties.
 - c. As at the date of the application, the judgment has not been satisfied or, if the judgment has been satisfied in part, the amount in respect of which it remains unsatisfied.
 - d. Facts that demonstrate the Supreme Court of Victoria is an appropriate court in which to bring the application.
 - e. If the judgment was registered, it could not be set aside.
 - f. Any accrued interest under the law of the original country and due at the time of the application.
 - g. Whether as at the date of the application, the judgment can be enforced by execution in the country of the foreign court.
 - h. The full name, title, occupation and the usual or last known place of residence or business of the judgment creditor and of the judgment debtor.
34. The affidavit must also exhibit a certified copy of the judgment of the superior court of the foreign country. If this judgment is not in English, a certified translation is also required.¹⁷⁹
35. Once a foreign judgment is registered by the Supreme Court of Victoria, the judgment creditor must then serve the judgment debtor with notice of the registration of the judgment.¹⁸⁰ This notice must advise the judgment debtor of their rights to apply for an order to set aside the judgment and the timeframe to do so.¹⁸¹

¹⁷⁷ *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic), r 11.03(2); see also *Supreme Court (General Civil Procedure) Rules 2015*, r 45.

¹⁷⁸ *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic), r 11.04(1).

¹⁷⁹ *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic), r 11.04(2).

¹⁸⁰ *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic), r 11.07(1).

¹⁸¹ *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (Vic), r 11.07(3).

- 36.** Before a judgment creditor can enforce the judgment, the period within which an application to set aside the registration may be made must have expired, any such application must have been determined by the Court, an affidavit of service of the notice of registration must have been filed in the Court with a copy of the notice of registration, and any order of the Court in relation to the judgment must have been authenticated and filed.¹⁸²
- 37.** The distinct procedure for bringing an application before the Victorian Supreme Court to enforce a foreign judgment under common law principles is found in Supreme Court of Victoria Practice Note SC Gen 15: *Enforcement of Foreign Judgments* <https://www.supremecourt.vic.gov.au/law-and-practice/practice-notes/sc-gen-15-enforcement-of-foreign-judgments>.

¹⁸² Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 (Vic), r 11.09.

New Zealand

1. Foreign judgments for money are enforceable in New Zealand under statute or under the common law.

Statute

1. Judgments from Australian courts and tribunals issued on or after 11 October 2013 may be enforced once registered under the Trans-Tasman Proceedings Act 2010.¹⁸³
2. Judgments from courts of the United Kingdom must first be registered under the Reciprocal Enforcement of Judgments Act 1934 before they can be enforced, provided the Act applies.¹⁸⁴ This statute also governs the registration of judgments from other jurisdictions, primarily certain Commonwealth countries but including France and Belgium.
3. All other judgments obtained from courts in Commonwealth jurisdictions may be enforced under the Senior Courts Act 2016 by first filing a memorial in the High Court as a record of the judgment.¹⁸⁵
4. Judgments registered or recorded under these statutes may be enforced by attachment order, charging order, sale order, possession order, arrest order, or sequestration order.¹⁸⁶

Common law

5. Judgments from courts in all other jurisdictions may be enforced under the common law. New Zealand's common law rules of private international law are derived from the English common law.
6. The judgment creditor must issue fresh proceedings, and satisfy the court of three pre-requisites.¹⁸⁷
7. First, the foreign court must have had jurisdiction to give judgment, which is established where:¹⁸⁸
 - a. the debtor was present in the foreign country at the time the proceedings were instituted;
 - b. the judgment debtor was plaintiff or counterclaimed in the foreign Court;
 - c. the judgment debtor, being defendant in the foreign Court, submitted to the jurisdiction of that Court by voluntarily appearing in the proceedings; or
 - d. the judgment debtor, before the commencement of the proceedings, agreed in respect of the subject matter of the proceedings to submit to the jurisdiction of that Court or of the Courts of that country.
8. The second prerequisite is the judgment must be for a definite sum of money.

¹⁸³ Section 54(2)(k).

¹⁸⁴ Section 8.

¹⁸⁵ Section 172.

¹⁸⁶ High Court Rules 2016, r 17.3.

¹⁸⁷ *Eilenberg v Gutierrez* [2017] NZCA 270 at [30].

¹⁸⁸ *Von Wyl v Engeler* [1998] 3 NZLR 416 (CA) at 420–421.

9. The third prerequisite is the judgment must be final and conclusive, although an appeal may be pending against it, or it may still be subject to appeal.¹⁸⁹
10. A judgment that meets those three pre-requisites may nonetheless be impeached where the judgment creditor can establish:¹⁹⁰
 - a. the judgment was obtained by fraud;
 - b. enforcement of the judgment would be contrary to public policy; or
 - c. the proceedings in which the judgment was obtained were contrary to natural justice.
11. A foreign judgment is not generally enforceable if it relates to taxes or penalties.¹⁹¹ A foreign judgment is not otherwise impeachable or examinable on its merits whether for error of fact or law.¹⁹²
 - b. The judgment creditor must file with, or shortly after, the application a duly authenticated copy of the Australian judgment.¹⁹⁴
 - c. After the Registrar registers the judgment, the judgment creditor must give notice of the registration to all judgment debtors.¹⁹⁵
 - d. The judgment debtor may apply to set aside the registration, or for a stay of enforcement in order to challenge the judgment in an Australian court or tribunal.¹⁹⁶
 - e. To enforce the registered judgment, the judgment creditor must first file an affidavit in satisfaction of the evidential requirements.¹⁹⁷
 - f. Subject to several exceptions, a registered Australian judgment has the same force and effect as if it had been originally given by the New Zealand court.¹⁹⁸

Procedure

12. To enforce a foreign judgment under the Trans-Tasman Proceedings Act 2010, the following rules apply:
 - a. To register the judgment, the judgment creditor must apply to the Registrar of either the High Court, or an inferior court that has the power to give the relief that is in the judgment.¹⁹³
13. To enforce a foreign judgment under the Reciprocal Enforcement of Judgments Act 1934, the following rules apply:
 - a. The judgment creditor must apply to register the judgment in the High Court,¹⁹⁹ providing one or more affidavits in support, and attaching the foreign judgment as an exhibit.²⁰⁰
 - b. A judge may order the judgment to be registered if satisfied the evidential requirements are met.²⁰¹

¹⁸⁹ *Inada v Wilson Neill Ltd* (1993) 7 PRNZ 246 (HC) at 251.

¹⁹⁰ *Eilenberg v Gutierrez* [2017] NZCA 270 at [30].

¹⁹¹ *Ross v Ross* [2010] NZCA 447, [2011] NZAR 30 at [13].

¹⁹² *Eilenberg v Gutierrez* [2017] NZCA 270 at [31].

¹⁹³ Section 56(1); Trans-Tasman Proceedings Regulations and Rules 2013, reg 14 and form 6.

¹⁹⁴ Trans-Tasman Proceedings Regulations and Rules 2013, reg 14(2).

¹⁹⁵ Section 62; Trans-Tasman Proceedings Regulations and Rules 2013, reg 19 and form 7.

¹⁹⁶ Sections 61 and 65; Trans-Tasman Proceedings Regulations and Rules 2013, r 18(2).

¹⁹⁷ Trans-Tasman Proceedings Regulations and Rules 2013, r 20.

¹⁹⁸ Section 63.

¹⁹⁹ High Court Rules 2016, r 23.4 and form G 30.

²⁰⁰ High Court Rules 2016, rr 23.7 and 23.8.

²⁰¹ Reciprocal Enforcement of Judgments Act 1934, s 4(1); High Court Rules 2016, rr 23.10–23.12.

- c. Once the judgment is registered, the judgment creditor must serve notice of the registration on the judgment debtor.²⁰² The judgment debtor may apply to the High Court to set aside the registration.²⁰³
 - d. Once the application is finally determined, and unless the Court sets aside the registration, the judgment has the same force and effect as if it had been originally given in the Court on the date of registration.²⁰⁴
- 14.** To enforce a foreign judgment under the Senior Courts Act 2016, the following rules apply:
- a. The judgment creditor must file a memorial in the High Court with the required particulars,²⁰⁵ authenticated by the seal of the foreign court.²⁰⁶
 - b. The judgment creditor must apply to the High Court for a rule or summons calling on the judgment debtor to show cause why execution should not issue upon the judgment.²⁰⁷
 - c. The rule or summons must be served on the judgment debtor. If the judgment creditor does not appear, or does not show sufficient cause, the Court may make an order for execution.²⁰⁸
- 15.** To enforce a foreign judgment under the common law, the following rules apply:
- a. The judgment creditor must commence proceedings in the High Court by statement of claim, and may also apply for summary judgment.
 - b. The proceedings must be served on the judgment debtor either in or outside New Zealand in accordance with the High Court Rules 2016.
 - c. Where judgment is entered by the High Court, it may be enforced by attachment order, charging order, sale order, possession order, arrest order, or sequestration order.²⁰⁹

²⁰² High Court Rules 2016, rr 23.18–23.19.

²⁰³ High Court Rules 2016, r 23.20.

²⁰⁴ Reciprocal Enforcement of Judgments Act 1934, s 4(2).

²⁰⁵ Section 172(3).

²⁰⁶ Section 172(2).

²⁰⁷ Section 172(5).

²⁰⁸ Section 172(6).

²⁰⁹ High Court Rules 2016, r 17.3.



Europe

France

1. Under article 509 of the code of civil procedure (CPC), judgments rendered by foreign courts shall be enforceable on the territory of the French Republic in the manner and under the circumstances specified by law.
2. The rules applicable to foreign judgments given by courts within the jurisdiction of a Member State of the European Union are those provided for by Regulation n°1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). For the record, according to this Regulation, a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required (article 39).
3. Outside the scope of those rules (and, where applicable, of multilateral or bilateral conventions ratified by the French state), the rules have been laid down by case law.
4. In reality, two types of applications must be distinguished:
 - a. If it is a question, on the basis of a foreign judgment, of being able to carry out acts of material execution on property or acts of coercion on persons, then it is necessary to have recourse to a preliminary exequatur procedure in order to give it enforceability. This control has been imposed by case law asserting that French courts cannot declare foreign judgments enforceable in France without review. It means that no foreign judgment may be enforceable in France without prior review of its international regularity by a French court during a procedure known as "exequatur".
 - b. On the other hand, if it is simply a question of having the foreign decision recognised, i.e. of taking into account in France the *res judicata* of the foreign judgment or the legal situation created by the foreign judgment, then French case law tends to admit it as of right without requiring prior procedure, even if there is uncertainty in case law as to the nature of the judgments which may benefit from this automatic recognition.

Enforcement of a foreign judgment in France: the exequatur procedure

Jurisdiction to hear exequatur proceedings

5. If a material act of execution is envisaged on the basis of a foreign judgment, this must be submitted prior to the exequatur procedure.
6. Only the court of first instance ("Tribunal judiciaire" cf. Article R. 212-8, *code de l'organisation judiciaire*) of the defendant's domicile or of the place of execution of the measure shall have jurisdiction, irrespective of the order and degree of the foreign authority which rendered the decision and the civil, commercial or social nature of the case. Representation by a lawyer is compulsory.

7. The exequatur applicant must produce a copy of the foreign decision, meeting the conditions necessary for its authenticity. An action for exequatur of a foreign judgment which is not enforceable in its state of origin shall be inadmissible. The enforceability of the foreign judgment may be established by a certificate from the competent registrars stating that there is no opposition, appeal or cassation against the decision.
8. However, in a recent decision, the Court of Cassation said that "exequatur for the purposes (...) of enforcement of a foreign judgment may be sought by incidental means in a proceeding which does not have that judgment as its main object" (Cass, 1e civ., 10 Jan. 2018, n° 16-20.416). Prior review of the regularity of the foreign judgment is maintained, but it can be exercised by any judge seized of this question as an incidental question and, it seems, even when exequatur is incidentally requested for the enforcement of the said foreign judgment. It now remains to be seen what scope future case law will give it.

Conditions for the international regularity of a foreign judgment:

9. French law is characterized by a favourable evolution to the reception of foreign judgments in France, the jurisprudence having progressively abolished three conditions of regularity previously required:
 - a. Thus, since the Munzer judgment (Cass. 1re civ., 7 Jan. 1964, Munzer), there is no longer a requirement of "good judgment": the French judge no longer has "power of review" and cannot therefore refuse a foreign decision which, in his view, is ill-founded in fact (in the assessment of fault, damage) or in law.
 - b. Second, the requirement of regularity, under foreign law, of the procedure followed before the foreign court is no longer required (Cass. 1st civ., 4 Oct. 1967).
 - c. Finally, the condition of jurisdiction, under the French conflict of laws rule, of the law applied by the foreign judgment was abandoned by the Cornelissen decision (Cass. 1re civ., 20 Feb. 2007, n° 05-14.082).
10. From now on, only three conditions are necessary under the case-law for the control of the international regularity of a foreign judgment (outside the European Union and in the absence of application of an international convention):
 - a. The jurisdiction of the foreign court: the foreign judgment must emanate from a foreign court with international jurisdiction, which is not the case if the dispute falls under French law under the exclusive jurisdiction of French courts. It must also be established that there is a genuine link between the country whose court has been seized and the dispute.
 - b. The conformity of the foreign judgment with international public policy: the judgment must conform to the French concept of international public policy (i.e. respect the essential principles of French law). This is a fundamental public policy consisting of the fundamental values of French society or a public policy of procedure consisting of the fundamental rights of the procedure in force in France: the right to procedural fairness and justice, the right to a fair trial.
 - c. The absence of fraud in the law: the judgment was not rendered under fraudulent conditions. Fraud against the law is a manoeuvre consisting in modifying a connecting factor (nationality, residence, etc.) in order to oust the law of a state normally competent under the French conflict of laws rule and make the law of

another state applicable. Fraud also leads to the refusal to accept in France any foreign judgment obtained for the sole purpose of evading the said rules. This is the case of fraud in judicial jurisdiction.

Conduct of the proceedings in exequatur

11. This action is in principle initiated by the person who wants to enforce the foreign judgment in France. The request for exequatur must therefore be made by a summons from the person who has won the case.
12. However, the case law has also admitted, for the benefit of a person who has lost before a foreign judge, the possibility of bringing an action for the unenforceability of that judgment in France. If under the terms of this action the French court finds that it is unenforceable, then it will be impossible to request its exequatur.
13. The judgment ruling on the action for enforcement shall establish the regularity or irregularity of the foreign decision and, consequently, confer or refuse to confer enforceability on that decision.
14. The exequatur judgment is provisionally enforceable unless the court decides otherwise (article 514, *code de procédure civile*).

Modalities of enforcement after the grant of exequatur:

15. If the judgment confers enforceability in France on the foreign decision, it does not itself regulate the modalities of the forced execution of that decision.
16. The coercive measures which may be applied in France are those provided for by the French rules, irrespective of the provisions of the foreign judgment or the law of the state of origin.

Recognition of a foreign judgment in France

17. The recognition of a foreign judgment implies taking into account both the *res judicata* abroad and the legal situation created abroad by this judgment (annulment of a contract, assertion of the existence of a right of claim or property, etc.). This effect is only allowed in France if the foreign judgment is internationally regular under French law (cf. *supra*) but it is generally not dependent on a prior exequatur procedure.
18. However, the authority of these judgments recognised by operation of law is only provisional. Their international regularity is only presumed and may be called into question as soon as the foreign judgment is invoked in judicial proceedings and the judge must assess its international regularity.
19. Jurisprudence has long recognised that some foreign judgments are automatically effective.
20. This is also the case for judgments constituting power, including in property matters, (i.e. the person vested with power by a foreign judgment: executor of a will, trustee because of death, liquidator of a company, trustee in bankruptcy who can assert his capacity and exercise in France the power attributed to him) which are recognised by operation of law.
21. On the other hand, while the doctrine is in favour of automatic recognition, French case law is more hesitant with regard to declaratory judgments in practical matters (annulment of a contract by a foreign judgment, recognition of a claim or a title to property, award of damages, etc.).
22. Thus, the effectiveness of bankruptcy judgments is in principle subject to a prior exequatur procedure (with the exception of their constituent aspect of power). Without an exequatur judgment, the decision opening the judicial liquidation abroad cannot produce any effect.

Germany

German system of recognition and enforcement

1. The main domestic stipulations governing the recognition and enforcement of foreign judgments under domestic German Law are Articles 328, 722 and 723 of the German Civil Procedure Act.

Recognition

2. Enforceability of a foreign judgment will only be granted if recognition is possible. According to Article 722 para (1) German Civil Procedure Act compulsory enforcement of a foreign judgment needs to be ruled admissible by a German judgment for enforcement. Therefore a final substantive judgment in a civil matter has to have been delivered by the foreign court. An enforceable content is needed, for example, an obligation to pay.
3. Foreign judgments will generally only be recognised upon their final adjudication. At the very least, the foreign judgment must have obtained a certain conclusiveness and finality and may no longer be appealed by the losing party based on the foreign country's procedural rules.
4. When these preconditions are met, even judgments delivered in summary proceedings (injunctive processes, temporary orders and proceedings covering attachments) will be recognised. The possibility to apply for a retrial or to appeal on a prerogative writ (e.g. a constitutional complaint) after final adjudication does not exclude or hinder recognition. The same applies to potential lack of a substantive legal effect or potential modification due to altered circumstances.
5. In order to get a judgment for enforcement one has to apply to the court of competent jurisdiction in Germany, which is according to Article 722 para (2) of the German Civil Procedure Act in general the local court (Amtsgericht, AG) or regional court (Landgericht, LG) with which the debtor has his general venue.
6. The court of competent jurisdiction will deliver the judgment for enforcement without reviewing the legality of the foreign decision.
7. According to Article 328 German Civil Procedure law recognition is hindered if:
 - a. The foreign court's subject-matter jurisdiction is not given.
 - b. The defendant has not entered an appearance in the proceedings and the document initiating the proceedings has not been served properly.
 - c. The judgment contradicts a judgment delivered in Germany or a judgment handed down abroad, or if the proceedings on which such judgment is based are incompatible with proceedings that have become pending earlier in Germany.
 - d. The recognition of the judgment would lead to a result that is obviously incompatible with essential principles of German law, especially if it is not compatible with fundamental rights.
 - e. The reciprocity has not been granted.
8. If the judgment for enforcement has been issued by the court, the compulsory enforcement will be pursued based on an execution copy of that judgment.

Enforcement

9. Compulsory enforcement in Germany is regulated mainly by Article 704 et seq. of the German Civil Procedure Act and by the Act on Forced Sales and Receivership (Gesetz über die Zwangsversteigerung und Zwangsverwaltung – ZVG). Enforceable final judgments which are no longer open to appeal are enforceable as well as interim orders and the other enforceable documents listed in Article 794 German Civil Procedure Act – for example settlements reached before an arbitration or concluded by lawyers.
10. A court order is necessary for the attachment of claims and other assets held by the debtor, and for compulsory enforcement against immovable property under the Act on Public Auctions and Receivership.
11. For the attachment of claims held by the debtor: the local court (Amtsgericht) for the place where the debtor lives is competent for ordering enforcement, for forced sale and receivership: the local court for the place where the property is situated.
12. Responsible for enforcing judgments in civil matters is the bailiff (Gerichtsvollzieher) – a court officer who is functionally independent in the exercise of his enforcement duties. The measures taken and cost statements drawn up by the bailiff can be challenged by bringing an objection (Erinnerung). The same applies if the bailiff refuses to execute an order. The objection is heard by the court with jurisdiction for the enforcement.
13. The bailiff is responsible for ensuring that the enforcement procedure is brought to a timely and effective conclusion. One of his primary duties is to take from the debtor a sworn statement of assets.
14. The application for enforcement can usually be made without legal representation.
15. The creditor must be in possession of an enforceable document establishing his claim. As a general rule the document must contain a court certificate of enforceability (Vollstreckungsklausel) and must be served on the debtor.
16. Subject to enforcement can be the debtor's movable assets, claims and other property rights as well as real property. Restrictions however apply to the debtor's earned income and certain specific movable assets that cannot be attached; the aim is to allow the debtor and his household to retain the minimum essential for personal or professional use.

European Union system of recognition and enforcement²¹⁰

17. Recognition and enforcement of foreign judgments in Germany is also governed by European Union ("EU") legislation, namely Regulation (EU) No 1215/2012 of the European Parliament and the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels Ia Regulation"). The Regulation applies to judgments of foreign EU Member State courts in civil and commercial matters, excluding revenue, customs or administrative matters. It does not apply to certain areas of civil law, such as the status or legal capacity of natural persons, matrimonial matters, wills and succession or bankruptcy.

²¹⁰ Based on European Commission, Judicial cooperation in civil matters in the European Union – A guide for legal practitioners, 2014.

Recognition

- 18.** Under the former EU legislation formalities for recognition and enforcement of any judgment delivered by a court in one Member State in another Member State had already been simplified. This legislation had introduced a uniform procedure for the declaration of a judgment as enforceable in another Member State, also known as *exequatur* procedure. Under the now existing Brussels Ia Regulation the *exequatur* procedure is abolished altogether. It is no longer necessary for a judgment creditor to apply for a declaration of enforceability; they can apply directly to have the judgment enforced.
- 19.** According to Article 36 Brussels Ia Regulation, a judgment given in another Member State shall be automatically recognised in Germany without the requirement of any special procedure. Recognition can only be refused in very few exceptional cases.
- 20.** Recognition may be refused if there is a ground for refusal of recognition as referred to in Article 45 Brussels Ia Regulation. A judgment will not be recognised (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed, (b) if in case of a judgment in default of appearance it is shown that the defendant was either not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, or (c) it conflicts with the rules of exclusive jurisdiction or the special rules on matters relating to insurance or consumer contracts.

- 21.** In all other cases German courts must accept the findings of fact regarding jurisdiction made by the court of origin and it is expressly forbidden to review the jurisdiction of that court. Article 36 states that under no circumstances may a foreign judgment be reviewed as to its substance. Any interested person may apply for a decision that none of the grounds for refusal of recognition apply to a particular judgment. An application may be lodged by any interested party against recognition and by the judgment debtor against enforcement before one of the courts listed by the Commission for the purpose. It relates solely to enforcement of the judgment not to the merits of the case. The decision on the application for refusal of enforcement may be appealed by the parties.

Enforcement

- 22.** Under Brussels Ia Regulation a judgment granted in one Member State is directly enforceable in the other Member State, and therefore also in Germany, provided that certain documents are produced. A judgment creditor wishing to enforce a judgment requests the court of origin to issue a certificate confirming the enforceability and giving details of the judgment. The certificate and a copy of the judgment are then sufficient authority for enforcement in Germany. In addition to empowering the judgment creditor to enforce the judgment in Germany in accordance with the German law, and under the same conditions as a judgment given by a German court, an enforceable judgment carries with it the power to use any provisional, including protective, measures in accordance with German law. If a judgment contains an order not known in the German the order is to be adapted to one of equivalent effect.

The Netherlands

1. A foreign judgment is enforceable under:
 - a. The Brussels Regulation or another EU Regulation that allows enforcement.
 - b. A bilateral or other convention that allows enforcement (see note below). Many of these conventions were superseded by the Brussels Regulation.
 - c. Principles of comity.

Principles of comity

2. An action may be brought before the competent court as determined by the ordinary rules, seeking relief in accordance with a foreign judgment.
3. The court will grant relief on this basis only if:
 - a. the foreign court had jurisdiction under generally accepted rules (e.g. not forum actoris);
 - b. the trial was fair;
 - c. there is no public policy violation;
 - d. there is no irreconcilable conflict with another judgment involving the same cause of action and the same parties; and
 - e. the foreign judgment is enforceable in the jurisdiction that issued it.
4. If these requirements are met, the court will, as a rule, issue a judgment along the lines of the foreign judgment (*Gazprom*).

Notes

5. There may be a public policy violation where the alleged failure to pay debts, resulting in the foreign judgment, was asserted under false pretences (*Yukos*). Public policy is reflected by the European Convention on Human Rights and similar documents.
6. The requirement under (e) above is not met where an appeals court in the jurisdiction that issued the judgment has annulled the judgment or granted a stay of enforcement, or where the judgment according to its terms must be enforced within a specific period of time, and this period of time has not yet commenced or has expired (ECJ, 29 April 1999, case C-267/97).
7. The Kingdom of the Netherlands consists of several regions ("countries"): the Netherlands, Aruba, Curacao and St Martin. Furthermore, Bonaire, St Eustace and Saba are public entities with a status comparable to a municipality in the Netherlands. Judgments from these regions or entities are considered as domestic and are enforceable in the Netherlands. The enforcement of judgments in the Caribbean is outside the scope of this analysis.

8. List of conventions (non-exhaustive):
Lugano Convention on jurisdiction and enforcement of judgments in civil and commercial matters (2007); Hague Convention on Choice of Court Agreements (2005); Convention on the Contract for the International Carriage of Goods By Road; Convention on the Law Applicable to Trusts and on their Recognition; Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971); Convention on Civil Procedure (1954) (relevant on issues of costs); and the Agreement between the Kingdom of the Netherlands and the Republic of Suriname regarding the mutual recognition and enforcement of judicial decisions and authentic instruments in civil matters.

Republic of Ireland

Introduction

1. The following is a summary of the position in Ireland. Recognition and enforcement of foreign judgments is pursued by way of originating summary summons in the High Court. Recognition and enforcement of foreign judgments is only permissible in respect of money judgments and may proceed by way of summary summons. Irish courts will not enforce foreign revenue, penal or other public law judgments. Foreign judgments must be final and conclusive. If an appeal is pending, the judgment may be considered final and conclusive unless either the first instance court or the appellate court grants a stay on the judgment. The judgment against the defendant must be given by a court of competent jurisdiction, that is the foreign court must have "jurisdiction" under Irish conflict laws to deliver the final and conclusive judgment in respect of which recognition and enforcement is sought.

Is there a difference between recognition and enforcement?

2. When one is dealing with judgments from the courts of other Member States of the European Union/EEA as opposed to judgments from other foreign courts, it is necessary to consider whether recognition and/or enforcement is being sought under EU Regulation 1215/2012 or EC Regulation 44/2001. Recognition is the process of giving the same effect or status to the judgment in the country where enforcement is sought as it had in the country the judgment was given. In Irish law, enforcement is typically

understood as being the subject of the process of execution. Recognition and enforcement are somewhat hand in glove as a judgment will need to be recognised in Ireland before it can be enforced here. It is extremely rare for recognition to be sought on its own, considering Ireland will only enforce money judgments. EU Regulation 1215/2012 has, however, altered this position somewhat.

Recognising and enforcing judgments in Ireland

EU Member States

3. The position with regard to the recognition and enforcement of judgments from the courts of other EU Member States is as follows. EU Regulation 1215/2012 came into effect on 10 January 2015 and applies to proceedings commenced on or after that date. This is more commonly known as the Brussels I Recast. It replaces EC Regulation 44/2001 which continues to apply to earlier proceedings and judgments. Both regulations apply to questions of enforcement of judgments in civil and commercial disputes.
4. Under EU Regulation 1215/2012, no declaration of enforceability is required for the enforcement of an EU Member State judgment to which it applies. The application of these regulations in Ireland is set out in Order 11A of the rules of the Superior Courts (RSC). To pursue enforcement, an applicant will need a copy of the judgment that satisfies the conditions necessary to establish its authenticity and a certificate issued pursuant to Article 53 which certifies

that the judgment is enforceable, containing an extract of the judgment and information about the cost of the proceedings and the calculation of interest. A translation of the certificate may be required.

5. For enforcement of EU Member State judgments to which EC Regulation 44/2001 applies, that is decision prior to 10 January 2015, a declaration of enforceability is required. This is an application made to the High Court. To pursue such an application for enforcement Order 42A RSC outlines the relevant requirements. The supporting affidavit should exhibit (i) the judgment which is sought to be enforced or a certified or otherwise duly authenticated copy thereof; (ii) if given in default, the original or certified copy of a document which establishes that the party in default was served with the document instituting the proceedings in sufficient time to enable him to arrange his defence; (iii) documents which establish that the judgment is enforceable and has been served. Translation of the documents (Irish or English) should also be exhibited. The affidavit should also provide for payment of a sum of money, on which interest is recoverable, address details for the parties, the grounds on which the right to enforce the judgment vests in the party making the application and a statement that judgment has not been (fully) satisfied.

Other judgments

6. The recognition and enforcement of foreign judgments from non-EU Member States or from courts whose judgments are governed by the Lugano Convention or other European Union legislative measures is somewhat different. Irish courts apply common law principles to the recognition and enforcement of such

judgments. Those principles are broadly similar to those applied by the English courts. A person who has obtained a money judgment from a foreign court has two options. The first is that the person may commence an action based on the judgment in the Irish courts for the amount of the judgment debt. The second is that they may bring an action based on the original cause of action on foot of which the foreign judgment was obtained. Where the first option is taken the Irish court will give a judgment which can then be enforced in Ireland in the same way as any judgment given by an Irish court.

Foreign arbitral awards

7. In respect of enforcement of foreign arbitral awards, the award must be in writing and be signed by the arbitrator(s). Where there is more than one arbitrator the signatures of the majority will suffice. The award should also set out its date and the place of arbitration. Such awards will be recognised and enforced under the New York Convention.²¹¹ Order 56 RSC dictates this procedure. An application for recognition and enforcement of a foreign arbitral award is commenced by way of originating notice of motion, returnable before the President of the High Court or the judge nominated to hear arbitration related matters. There is a designated arbitration judge appointed by the President of the High Court under the provisions of the Arbitration Act 2010 and all matters relating to arbitration are heard by that judge. The notice of motion is grounded on affidavit which should set out the basis on which the court has jurisdiction to grant the relief sought and should exhibit the arbitral award and agreement. If the respondent wishes to challenge the application, they may put in a replying affidavit and the court may make direction

²¹¹ Available at <https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf> accessed 30 September 2020. See further <http://www.newyorkconvention.org/> accessed 30 September 2020.

for the conduct of the proceedings prior to determining the application. The application will then be determined at a hearing based on the affidavit evidence exchanged, with the benefit of oral and possibly legal submissions.

Execution/enforcement

8. Once the courts have recognised a foreign judgment, there are several general methods of enforcement to collect the judgment debt:
 - a. An execution order (or Order of Fieri Facias ²¹²) which orders the seizure and sale of goods belonging to the judgment debtor in Ireland by the Sheriff. This remedy is rarely availed of as it is perceived as being rather ineffective compared to the other remedies available. A judgment mortgage (Section 116, Land and Conveyancing Law Reform Act 2009) could be registered against real property in Ireland owned by the judgment debtor and will operate as if the judgment debtor had mortgaged the property to the judgment creditor. If payments are not forthcoming, the judgment creditor can force the sale of the property by court order and recover the debt owed from the proceeds of the sale. It worth noting that The Land and Conveyancing Law Reform (Amendment) Act 2019 may have an impact on the process as the Court must take into account a number of considerations when deciding whether to make or refuse a possession order in respect of a borrower's principal private residence.
 - b. A charging order may be obtained by the judgment creditor over an Irish government stock, funds, annuities, etc. owned by the judgment debtor.
 - c. Garnishee orders (Order 45 RSC) may be obtained where the debtor has no assets of his own and there is money due and owing to him from a third party. The judgment creditor may have to seek to have the debt paid to him instead, however the garnishee must be within the jurisdiction and may include a firm, any member of which is within the jurisdiction.
 - d. A receiver by way of equitable execution (Order 45 Rule 9, RSC) may be appointed over the judgment debtor's Irish property. This relief is granted where ordinary methods of execution would not benefit the judgment creditor. Future assets may be attached in appropriate circumstances. A receiver may be appointed by way of equitable execution even before the judgment is obtained to prevent the dissipation of assets.
 - e. Liquidation of an Irish registered debtor company can also be effective in securing payment. A judgment creditor can petition the court for the appointment of a liquidator to wind up the judgment debtor company and realise the assets of the company for the benefit of its creditors.
 - f. A judgment creditor may also seek an order to obtain information from the judgment debtor about its assets through a court application for discovery in aid of execution. These applications are made on an ex parte basis. The court may order the attendance of the judgment

²¹² Courts Service of Ireland, "Information Booklet on the Booklet for High Court Judgment Sets and Orders of Fieri Facias" <https://www.courts.ie/acc/alfresco/c2438acc-ab12-4a01-9785-be74010ca06c/Judgment%20Sets%20and%20Orders%20of%20Fieri%20Facias%20July%202019.pdf#view=fitH> accessed 20th Sept 2020.

debtor (or officers of a corporation) for oral examination or the provision of documentation by the judgment debtor prior to examination. This is a useful option where the judgment debtor is domiciled or registered in Ireland.

Where recognition and enforcement may be refused

9. It must be noted that there are a number of grounds on which the recognition and enforcement of a foreign judgment may be refused by the Irish courts, such as where the judgment was procured by fraud or where enforcement would be against public policy.
10. In respect of a judgment procured by fraud, recognition and enforcement may be refused by the Irish court applying common law principles. An Irish court will ordinarily give some weight to exercising its discretion in considering the recognition and enforcement of the foreign judgment to whether, and how, allegations of fraud were addressed in the original court.²¹³
11. Likewise, Irish courts will not allow recognition and enforcement of a foreign judgment which is contrary to Irish public policy. Such public policy considerations are not finite and it is important to underline that what may be permissible in one jurisdiction may not be compatible with Irish public policy.²¹⁴ The EU Judgment Regulations and the Lugano Convention also provide that recognition may be refused where it is manifestly contrary to public policy in the Member State addressed.
12. The most extensive discussion of public policy in the Irish courts in this regard is to be found in the judgment of *Kelly J. in Brostrum Tankers AB v. Factorias Vulcano SA* [2004] 2 I.R. 191 in which he addressed the public policy exception to the enforcement of a foreign arbitral award under the New York Convention.²¹⁵ As noted by Kelly J.:

“The case law and the textbook writers make it clear that the public policy defence to an enforcement application is one which is of a narrow scope. It extends only to a breach of the most basic notions of morality and justice.”²¹⁶
13. As such, for an enforcement to be refused it would have to be contrary to public policy involving “some element of illegality, or that the enforcement of the award would be clearly injurious to the public good, or possibly that enforcement would be wholly offensive to the ordinary responsible and fully informed member of the public”.²¹⁷ Consequently, in order to invoke the public policy exception to Irish common law enforcement, the defendant has a high threshold has to meet.
14. Concerning the statute of limitations, while the EU Judgment Regulations and Lugano Convention do not provide for limitation periods, and therefore for judgments to be recognised and enforced, they must still be enforceable in the state in which they were given. There is authority from the Court of Justice of the European Union²¹⁸ to the effect that enforceability of a judgment in the Member State of origin represents a prerequisite for its enforcement in another member state. The limitation period of contractual claims of six years from the date of judgment applies in Ireland.

²¹³ See *Owens Bank Ltd v. Bracco* [1992] 2 A.C. 443.

²¹⁴ See *Sporting Index Ltd v. O’Shea* [2015] IEHC 407.

²¹⁵ *Supra.* 1.

²¹⁶ [2004] 2 I.R. 191 at para 40.

²¹⁷ *ibid* at para. 45.

²¹⁸ C-420/07 *Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams* [2009] ECR I-03571.

Recent case law

15. A relatively recent Court of Appeal decision is of interest, namely, *Albaniabeg Ambient Sh.p.k. v. Enel S.p.A. & Enelpower S.p.A* [2018] IECA 46. The appeal arose from a decision of McDermott J. in the High Court who refused leave to the plaintiff for liberty to serve out of the jurisdiction to seek to enforce a judgment of the Albanian court against the two named defendants. The High Court refused the application on the basis that the defendants had no assets within the jurisdiction and they were not likely to have any such assets in the near future, therefore there was no practical benefit for the plaintiff if the enforcement proceedings were commenced within the jurisdiction.
16. On appeal, the Court of Appeal dismissed the appeal and upheld the decision of the High Court. In its judgment (delivered by Hogan J.) the Court noted that there is no *ex ante* rule which requires the presence of assets within the jurisdiction. The plaintiff, as the beneficiary of an unsatisfied final judgment of the Albanian courts, could not show some prospect of securing a material benefit as there were no assets of the defendants in Ireland and there was no evidence to demonstrate that there was a reasonable prospect or possibility that there would ever be any assets of the defendants in Ireland. While the court may have jurisdiction to grant leave, these types of cases remain unusual and leave should not normally be granted in such cases where enforcement proceedings have already been determined or are pending in another country. Hogan J also relied upon the fact that the enforcement proceedings had no connection with Ireland and enforcement proceedings would require the Irish courts to embark on complex, lengthy and costly proceedings without any obvious material benefit to the plaintiff. Finally, he noted that the judgment creditor had not shown that enforcement proceedings in the state

would be convenient that such proceedings would be suitable or appropriate for the jurisdiction to determine.

Maintenance and champerty

17. The Irish courts have considered this issue in a number of recent judgments. Denham C.J. provided a useful definition of maintenance and champerty in her judgment in *Persona Digital Telephony Ltd. v. Minister for Public Expenditure* [2017] IESC 27 at para. 25 stating:

“Maintenance may be defined as the giving of assistance, by a third party, who has no interest in the litigation, to a party in litigation. Champerty is where the third party, who is giving assistance, will receive a share of the litigation succeeds.”
18. That case was declaratory of the common law position and the status of maintenance and champerty has been reaffirmed. Denham C.J. further noted that although the Supreme Court had not been given any evidence of a prosecution for champerty in recent years, the offence still exists, although recognising that the offences had been abolished in neighbouring jurisdictions.

19. Clarke J. in the *Persona* case stated that if there was a finding that the constitutional right of access to justice was being hampered that it could feasibly result in the courts “altering the parameters of the law of champerty”²¹⁹ at least in limited circumstances. As a final observation, Clarke J. noted that if a situation arose where there was a finding of a breach of the constitutional right to access justice and there had been no legislative action in the intervening period, then it may fall upon the courts to remedy the problem.²²⁰

Third-party funding and champerty

20. The issue in *Persona* was whether third-party funding provided during proceedings to support a plaintiff who was unable to progress a case of significant public importance was unlawful by reasons of the rules of maintenance and champerty. This question had been previously addressed by the court on *O’Keefe v. Scales* [1998] 1 I.R. 290 at 295 by Lynch J.:

“A person who assists another to maintain or defend proceedings without having a bona fide interest independent of that other person in the prosecution or defence of those proceedings acts unlawfully and contrary to public policy and cannot enforce an agreement with that other person for any form of benefit, whether it be a share of the proceeds of the litigation or a promise of remuneration, such as money or a transfer of property if the claim is successfully defended.”

21. The question was also directly addressed by *Costello J. in SPV Osus Ltd. v. HSBC International Trust Services (Ireland) Ltd.* [2015] IEHC 602 at para. 40 “[professional third party funders who make a commercial decision to ‘invest’ in litigation in the hope of making a profit commit the torts of either maintenance and/or champerty.” In *Thema International Fund v. HSBC Institutional Trust Services (Ireland) Ltd.* [2011] 3 I.R. 654 Clarke J. (as he then was) drew a distinction between whether the third party has a legitimate interest or not. He was satisfied that the third-party funder had a sufficient connection with the plaintiff to take the funding arrangement outside the scope of maintenance and champerty. This was a distinguishing element of Denham C.J. in *Persona* where on the facts, the third-party funding arrangement before the court was found to be a champertous agreement.

22. *SPV Osus* was appealed to the Court of Appeal. The Court of Appeal gave judgment on 2nd March 2017²²¹ upholding the ruling of the High Court in full and dismissing the claim as amounting to trafficking in litigation. The case was then appealed to the Supreme Court which gave its judgment on 31 July 2018.²²² The judgment now settles in Irish law that the assignment of the right to litigate is unenforceable unless the assignee has a genuine commercial interest in the assignment and this is in line with the English House of Lords decision in *Trendtex*.²²³ From the judgment, it is clear that third-party funding from a third party with no legitimate interest in the litigation and the assignment of a right to litigate to a third party with no legitimate interest in the litigation will remain off limits in Ireland

²¹⁹ [2017] IESC 27 at para 2.9.

²²⁰ *ibid.* at para 4.1.

²²¹ *SPV Optimal Osus Ltd v. HSBC Institutional Trust Services (Ireland) Ltd* [2017] IECA 56.

²²² *SPV Optimal Osus Ltd v. HSBC Institutional Trust Services (Ireland) Ltd* [2018] IESC 44.

²²³ *Trendtex v. Credit Suisse* [1980] Q.B. 629.

unless specific legislation is introduced to address the issue.

23. Of considerable note from the Judgment are the obiter remarks of Clarke CJ. in his concurring written judgment. The Chief Justice referred to his prior comments in the *Persona* case concerning litigation funding agreements (LFA'S) and stated the following:

"As I noted in *Persona*, there is a significant and, arguably, increasing problem with access to justice which arises in the context of the increasingly complex world in which we live, which in turn has increased the complexity of much litigation not least in the commercial field [...]

I would wish to emphasise that I remain strongly of the view that it is necessary that some measures be taken to attempt to address this problem [...]

However, I remain very concerned that there are cases where persons or entities have suffered from wrongdoing but where those persons or entities are unable effectively to vindicate their rights because of the cost of going to court. That is a problem to which solutions require to be found. It does seem to me that this is an issue to which the legislature should give urgent consideration."²²⁴

24. The Chief Justice's comments represent the most resounding statement on the need for legislative consideration of third-party professional litigation funding within Ireland.

After the event (ATE) insurance

25. As noted above a non-party with a genuine commercial interest (e.g. a company for the benefit of the shareholders) may fund litigation. There may however be concerns about the possible obligation to pay costs of the other party upon losing. The question arose as to whether ATE insurance (i.e. cover taken out after the event which gave rise to the action to cover the opponents' costs in the case of an unfavourable award) constituted a form of prohibited litigation funding. It was held to be permissible in *Greenclean Waste Management Ltd v. Maurice Leahy p/a Maurice Leahy & Co Solicitors* [2014] IEHC 314.²²⁵ An important point to note is that the Court of Appeal accepted that the existence of a valid ATE policy could be taken into account in resisting an Order for Security of Costs.²²⁶

²²⁴ *SPV Osus Ltd v. HSBC Institutional Trust Services (Ireland) Ltd* [2018] IESC 44 at para. 2.1.

²²⁵ This was subsequently before the Court of Appeal which did not reopen this point merely noting how such insurance had "crept into this jurisdiction", *Greenclean Waste Management Ltd v. Maurice Leahy p/a Maurice Leahy & Co Solicitors* [2015] IECA 97.

²²⁶ *ibid.* There must be adequate evidence of the existence of an adequate policy and that simply transplanting the text, terms and conditions of a policy from another jurisdiction may be ineffective.

Constitutional right of access to justice

26. While the Irish Constitution provides for the right of access to justice under Article 40.3, the courts will balance this right with the principle that professional third-party funding should not be permitted on the basis that it breaches the rules on champerty. The Law Reform Commission in its report on *Contempt of Court and Other Offences and Torts Involving the Administration of Justice*²²⁷ called for legislation in this area. This was reiterated by Denham C.J. at para.6.2 in *Persona*:

“[I]n light of the importance of providing access to justice, it is certainly arguable that legislation should be introduced to allow for third party funding of litigation by a person or body who does not have a legitimate interest in the proceedings.”

Collective litigation

27. At present, Irish law does not provide for collective litigation as such, but rather allows for so-called “representative actions” and “test cases”. Order 15 rule 9 RSC provide for representative actions and are allowed in restricted circumstances where there is a common interest, a common grievance and relief beneficial to all involved. Every potential claimant must opt in and they will be subsequently bound by any outcome of the claim. The courts have been reluctant to allow flexibility for this type of action and limiting its scope to redress for mass harm.
28. Alternatively, a court can order that matters in dispute be consolidated or tried together. Matters pending in the High Court can be consolidated on the application of any party and regardless of whether or not all parties consent to the order (Order 49 Rule 6 RSC). The rule states as follows:
- “6. Causes or matters pending in the High Court may be consolidated by order of the Court on the application of any party and whether or not all the parties consent to the order.”
- While provision is made for this in the court rules, the court has an inherent jurisdiction to order that cases be heard simultaneously.
29. In contrast to joinder proceedings, consolidation does not involve making all claimants parties to the proceedings. The claimant conducts the litigation on the basis that they represent the class and that any judgment will bind its members. A key limitation on the use of joinder or consolidation as a mechanism for collective action is the fact that separate proceedings must already be in existence for these procedures to operate.
30. Test cases on the other hand are the preferential mechanism for litigation involving mass harm in Ireland.²²⁸ This is to ensure that cases and party resources are not unnecessarily duplicated, thus a test case is chosen among many cases that face similar issues, with the rest stayed until the resolution of the test case. While the subsequent cases are not bound to follow the test case technically, precedent and similarity of facts will usually lead to the same verdict being reached.²²⁹

²²⁷ Issues Paper LRC IP 10-2016.

²²⁸ Joanne Blennerhassett, *A Comparative Examination of Multi-Party Actions: The Case of Environmental Mass Harm* (Hart 2016) 260.

²²⁹ Law Reform Commission, *Multi-Party Litigation (Class Actions)* (n 21) 16-17.

31. As noted by Nic Bhloscaidh, "The Law Reform Commission have also recommended that Multiple Party Actions (MPA's) be included within the civil legal aid framework in order to attain equality of access to justice for all class litigants."²³⁰ As of 17 September 2020, the Multi-Party Actions Bill 2017 is before Dáil Éireann, at the Third Stage. The Bill²³¹ is heavily grounded in the recommendations of the Law Reform Commission paper on Multi-Party litigation from 2005.²³² A point which may also have a bearing up the implementation of legislation in this area, was raised in a speech on 11 October 2017 by the Chief Justice underling that the Irish government should consider adopting a practice of auditing new legislation to ascertain the resources implication for the courts.²³³
32. In addition, as recently as January 2020, a new report by the Irish Society of European Law²³⁴ assessing whether the lack of third-party litigation funding and class actions in Ireland is a barrier to litigation was launched by the Chief Justice. As such, it is clear there is some momentum in these areas.

²³⁰ Caitríona Nic Bhloscaidh, "The Concurrent Operation of Public and Private Enforcement of the Duties of Corporate Directors: Reinvigorating the Derivative Action and Refining the Public Enforcement Regime" *Commercial Law Practitioner* 2018, 25(6), 132-140.

²³¹ Houses of the Oireachtas, "Multi-Party Actions Bill 2017" <https://data.oireachtas.ie/ie/oireachtas/bill/2017/130/eng/initiated/b13017d.pdf> accessed 21 September 2020.

²³² Law Reform Commission, "Report on Multi-Party Litigation (LRC 76-2005)" https://www.lawreform.ie/_fileupload/Reports/rMultipartylitigation.pdf accessed 21 September 2020.

²³³ Paula Mullooly, "Class Actions Bill presented to Oireachtas" <https://www.algoodbody.com/insights-publications/class-actions-bill-presented-to-oireachtas> accessed 21 September 2020.

²³⁴ ISEL, "Report of the EU Bar Association and the Irish Society of European Law relating to Litigation Funding and Class Actions" <https://www.isel.ie/event-file/download/id/132> accessed 21 September 2020.

United Kingdom

England and Wales

1. Foreign judgments for money are enforceable in England and Wales under the common law.
2. There are also a number of procedures provided by treaty, statute or rule in respect of some the enforcement of judgments from a number of jurisdictions, and these should be used where available.²³⁵ However, this contribution to this memorandum is confined to enforcement of judgments of commercial courts worldwide, under the common law.
3. The theoretical basis for enforcement under the common law is that once a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, and a claim to enforce that obligation may be maintained.²³⁶
4. The common law recognises that a court of a foreign country outside the United Kingdom has jurisdiction to give a judgment capable of enforcement or recognition as against the person against whom it was given in the following cases:
 - a. If the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country.
 - b. If the person against whom the judgment was given was claimant, or counterclaimed, in the proceedings in the foreign court.
 - c. If the person against whom the judgment was given submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings.
 - d. If the person against whom the judgment was given had agreed, before the commencement of the proceedings and in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court or of the courts of that country.

²³⁵ See in particular the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933.

²³⁶ See *Rubin v Eurofinance SA; New Cap Reinsurance Corporation (In Liquidation) v AE Grant* [2012] UKSC 46 at [9].

5. Under the applicable common law procedure, the person who has obtained the foreign judgment and wishes to enforce it in England and Wales will be required to commence a new case so as to obtain a judgment of the courts of England and Wales.
6. However, unless the person against whom the judgment was given can satisfy the court that it has a real prospect of establishing at trial a ground for impeaching the foreign judgment, the person who has obtained the judgment will often be entitled to apply to obtain summary judgment in that new case reasonably swiftly and without oral evidence or trial.²³⁷
7. To be enforced, the foreign judgment must be final and conclusive. It may be final and conclusive even though it is subject to an appeal. A foreign judgment which is final and conclusive on the merits cannot generally be impeached for any error either as to fact or law.
8. A foreign judgment may be impeached:
 - a. for fraud;
 - b. on the grounds that its enforcement or recognition would be contrary to public policy;
 - c. if the proceedings in which it was obtained were opposed to natural justice (that is to say, they involved a substantial denial of justice).
9. In addition to the position at common law, there is a statutory duty directly on a court of England and Wales not to give effect in England and Wales to the judgment of a foreign court where to do so would violate fair trial standards.²³⁸
10. A court of England and Wales will not enforce certain types of foreign judgments, for example judgments ordering the payment of taxes, fines or penalties.
11. Reciprocity is not a requirement at common law.²³⁹ However countries requiring reciprocity will know that a country applying the common law can be expected to enforce their judgments in accordance with the common law.
12. If the claim on the foreign judgment is brought in the Commercial Court (one of the Business and Property Courts of England and Wales) and is successful in the Commercial Court, the person who obtained the foreign judgment will then have the benefit of a judgment of the Commercial Court. The person who obtained the foreign judgment will then be entitled, if necessary, to use the enforcement procedures of the courts of England and Wales to enforce the judgment of the Commercial Court.
13. These enforcement procedures include:
 - a. orders requiring judgment debtors to provide information about their assets;
 - b. third-party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - c. charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - d. orders for sale of land or other property over which the judgment creditor has the benefit of a charge;
 - e. orders appointing enforcement officers to seize and sell the judgment debtor's goods;
 - f. orders appointing receivers;
 - g. orders relating to insolvency procedures.

²³⁷ Under Part 24 of the Civil Procedure Rules 1998. A recent example in the Commercial Court is *OJSC Bank of Moscow v Chernyakov* [2016] EWHC 2583 (Comm). The Civil Procedures Rules provide for summary judgment if the court considers that (a) the defendant has no real prospect of successfully defending the claim or issue and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

²³⁸ See section 6 of the Human Rights Act 1998.

²³⁹ *Rubin v Eurofinance SA; New Cap Reinsurance Corporation (In Liquidation) v AE Grant (above)* at [126]-[127]; *In re Trepca Mines Ltd* [1960] 1 WLR 1273.

Outline of procedural steps

14. In order to enforce a judgment of a foreign court in the Commercial Court of England and Wales, the person who has obtained the foreign judgment must issue a claim form in the Commercial Court, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the foreign judgment should be exhibited to the claim form. The claim may be in the currency of the foreign judgment.
15. A foreign judgment will be considered certified when accompanied by a certificate endorsing the judgment as a true copy. The certificate should be signed by a Judge or Registrar of the relevant foreign court, dated, and bear the seal of that court.
16. Where the judgment debtor is outside the United Kingdom, the claimant must apply for permission to serve the claim out of the jurisdiction in accordance with Rules 6.36 and 6.37 and Part 23 of the Civil Procedure Rules 1998 (CPR). The application should be supported by a witness statement:
 - a. exhibiting a certified copy of the foreign judgment;
 - b. stating that paragraph 3.1(10) of CPR Practice Direction 6B applies – the claim is made to enforce a foreign judgment;
 - c. stating that the claimant believes that the claim has a reasonable prospect of success;
 - d. stating the defendant's address if known; and
 - e. clearly bringing to the attention of the Commercial Court any matter which, if the defendant were represented, the defendant would wish the court to be aware of. This includes any matters which might tend to undermine the claimant's application.
17. If, following service, the defendant does not respond to the claim, the claimant will be entitled to obtain judgment in default under Part 12 of the Civil Procedure Rules 1998. However, it remains open to the defendant to challenge the jurisdiction of the Commercial Court.
18. If the defendant acknowledges service, the claimant must file and serve particulars of claim, setting out a concise statement of the facts relied on in support of the claim. The particulars of claim should contain a statement that the foreign court had jurisdiction and the grounds for that jurisdiction.
19. In most cases, a claimant will be entitled to apply to obtain summary judgment without trial under Part 24 of the CPR, unless the defendant can satisfy the Commercial Court that it has a real prospect of establishing at trial one of the grounds for impeaching the foreign judgment or that to give effect to the foreign judgment would violate fair trial standards. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.

Northern Ireland

1. Foreign judgments for money are enforceable in Northern Ireland under the common law in a very similar manner to the enforcement of judgments under the common law in England and Wales (please see above for the England and Wales procedure).
2. However, in Northern Ireland there is an alternative unique system for the enforcement of judgment debts and other court orders. Unlike most common law systems which enforce judgments by ancillary orders of the courts, not necessarily the same court which gave judgment on the merits of the claim, judgments in Northern Ireland are enforced by a central body, the Enforcement of Judgments Office (EJO) which exercises both administrative and judicial functions in relation to the enforcement of judgments.
3. A judgment creditor may register the judgment of a foreign court with the EJO, which in turn examines the financial and other relevant circumstances of the debtor to determine the best means of enforcing the judgment, or indeed whether the judgment can be enforced at all. There is a wide range of enforcement methods available which are mostly similar to those which were previously available to the courts and are available to the courts in England and Wales today. There is a power to make attachment of earnings orders in Northern Ireland in a similar way to England and Wales; in Northern Ireland the EJO can make an Attachment of Earnings Order on the application of a creditor without any prior Instalment Order having been made.

Scotland

1. Foreign judgments for money are enforceable in Scotland under the common law. The judgment must be for payment of a definite sum of money.
2. The theoretical basis is that once a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, and a claim to enforce that obligation may be maintained.²⁴⁰
3. Under the applicable common law procedure, the person who has obtained the foreign judgment and wishes to enforce it in Scotland will require to raise an action for decree conform to the judgment of the foreign court: that is to say an action in which the foreign judgment, and not the facts upon which it is based, is founded upon as constituting the obligation. The action may only be raised in the Court of Session.
4. Scots courts have a statutory duty not to give effect in Scotland to the judgment of a foreign court where to do so would violate fair trial standards.²⁴¹
5. Reciprocity is not a requirement at common law.
6. If the action for decree conform is successful, the person who obtained the foreign judgment will then have the benefit of a judgment of the Court of Session. The person who obtained the foreign judgment will then be entitled, if necessary, to use the court's enforcement procedures to enforce the decree conform.

²⁴⁰ See *Rubin v Eurofinance SA; New Cap Reinsurance Corporation (In Liquidation) v AE Grant* [2012] UKSC 46 at [9].

²⁴¹ See section 6 of the Human Rights Act 1998.

Outline of procedural steps

7. In order to enforce a judgment of a foreign court in the Court of Session:
 - a. The person who has obtained the foreign judgment must raise an action for decree conform. The action is raised by way of summons as in an ordinary Court of Session action for payment. The summons should contain a concise statement of the facts relied upon to support the action.
 - b. The parties to the action for decree conform must be the same as those in the foreign action²⁴² (or, probably, have a relevant derived interest²⁴³).
 - c. Where the judgment debtor is outside the United Kingdom, service on him of the summons should be by one of the methods described in rule 16.2 of the Rules of the Court of Session 1994.
 - d. The party seeking decree conform must prove the foreign judgment on which the action is based. The normal way to do this is to produce an official extract (or duly certified copy) of the foreign judgment, which is duly authenticated and certified according to the law of the legal system of the court making it. If necessary, there should also be a translation of the judgment into English, authenticated by an affidavit before a notary public.
 - e. If, following service, the defender does not respond to the action, the pursuer may seek decree in absence in terms of rule 19.1 of the Rules of the Court of Session 1994.
 - f. If the action is defended, there are limited grounds for resisting recognition or enforcement. A foreign judgment which is final and conclusive on the merits cannot generally be impeached for any error either as to fact or law.
8. Grounds for resisting recognition or enforcement are:
 - a. that the foreign court lacked jurisdiction over the judgment debtor as determined by the Scottish rules of private international law;²⁴⁴
 - b. that there was a substantial degree of unfairness or irregularity in the foreign procedure;
 - c. that the foreign judgment was a penal or revenue judgment or its enforcement would be contrary to public policy;
 - d. that the foreign judgment was not a final judgment;²⁴⁵
 - e. that the judgment is no longer enforceable in the legal system of origin (e.g. because it has been satisfied in full, or because of prescription or limitation);
 - f. that the foreign judgment was obtained by fraud;
 - g. that the foreign judgment falls within the scope of section 5 of the Protection of Trading Interests Act 1980 (c 11);
 - h. that the foreign judgment is affected by section 32 of the Civil Jurisdiction and Judgments Act 1982 (c 27).

²⁴² Anton, *Private International Law* (3rd ed), para 9.76, and Crawford and Carruthers, *International Private Law: A Scots Perspective* (4th ed.), para 9-09.

²⁴³ e.g. an executor or trustee in sequestration of the original judgment debtor: *Stair Memorial Encyclopaedia of the Laws of Scotland*, Vol 8, Recognition and Enforcement of Non-Scottish Judgments (G Maher), para 403.

²⁴⁴ As to which see Anton, *supra*, paras 9.17 to 9.34, Crawford and Carruthers, *supra*, para 9-10.

²⁴⁵ It must not be an interlocutory judgment capable of revision by the court which granted it. It may be final and conclusive even though it is subject to an appeal.





Middle East

Abu Dhabi

Abu Dhabi Global Market Courts

1. Abu Dhabi Global Market Courts ('ADGM Courts' or the 'courts') were established by Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law No. (12) of 2020) as one of the authorities of Abu Dhabi Global Market (ADGM). The courts form part of the judicial system of the United Arab Emirates (UAE). They directly apply the common law of England and Wales. They are comprised of a Court of First Instance and a Court of Appeal. They deal with civil and commercial cases and disputes having a connection with ADGM. Parties may also opt-in to the jurisdiction of ADGM Courts to have their disputes determined, even though the parties and the subject matter of the dispute have no other connection with ADGM.

Requirements for the enforcement of foreign judgments by ADGM Courts

2. Judgments of foreign courts may be enforced by ADGM Courts:
 - a. under the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ('ADGM Courts Regulations'); or
 - b. if the foreign court judgment does not fall within the scope of the ADGM Courts Regulations, in accordance with ordinary common law principles.

Enforcement under the ADGM Courts Regulations

3. The judgments of foreign courts that may be enforced under the ADGM Courts Regulations are defined as judgments that are issued by the courts of countries:
 - a. that have entered into an applicable treaty with the UAE for the mutual recognition and enforcement of judgments
 - b. where the Chief Justice of the courts is satisfied that substantial reciprocity of treatment will be assured as regards the recognition and enforcement in that foreign country of the judgments of the courts (the 'recognised courts')²⁴⁶

and are defined as judgments of recognised courts under the ADGM Courts Regulations.²⁴⁷

4. In the case of a foreign court judgment that is subject to an applicable treaty, ADGM Courts must comply with the terms of such treaty.²⁴⁸ Judgments issued by the courts of foreign countries that fall outside the scope of international treaties may be enforced by ADGM Courts under the ADGM Courts Regulations subject to the principle of reciprocity. ADGM Courts will enforce judgments of foreign countries only if, and to the extent that, ADGM Courts' judgments are also recognised and enforced by those courts. If reciprocity is assured, the Chief Justice of ADGM Courts issues an order

²⁴⁶ Sections 170 and 171 of ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015

²⁴⁷ Sections 167(1) of ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015

²⁴⁸ Section 170(a) of ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

directing that the courts of a foreign country be recognised for the purposes of enforcement.²⁴⁹

5. In relation to such recognised courts, ADGM Courts have also entered into a number of memoranda of guidance setting out the agreed procedure for the reciprocal recognition and enforcement of judgments. These recognised courts are from other common law jurisdictions, including the Commercial Court, Queen's Bench Division, England and Wales, Supreme Court of the Republic of Singapore, Federal Court of Australia, Supreme Court of New South Wales, and High Court of the Hong Kong Special Administrative Region of the People's Republic of China.²⁵⁰
6. Foreign judgments that are recognised and enforced by the courts include any judgment, decision or order given by a recognised court in any civil proceedings.²⁵¹ The courts will recognise and enforce such a judgment only if:
 - a. it is either final and conclusive as between the judgment creditor and the judgment debtor or requires the latter to make an interim payment to the former. Under the common law regime, a judgment is considered final and conclusive and is enforceable notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal²⁵²; and
 - b. there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty.
7. The judgment creditor may commence enforcement proceedings in ADGM Court of First Instance by filing a claim for the registration of a recognised court's judgment using the procedures provided in the relevant treaty or memorandum of guidance and the ADGM Court Procedure Rules 2016 (the 'ADGM Court Procedure Rules').
8. In order to register the judgment of a recognised court, the judgment creditor will have to establish that that court had jurisdiction according to the English rules on the conflict of laws to determine the subject matter of the dispute. The recognised court shall be deemed to have had jurisdiction:²⁵³
 - a. if the judgment debtor, being a defendant in the recognised court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings; or
 - b. if the judgment debtor was a claimant or counter-claimant in the proceedings in the recognised court; or
 - c. if the judgment debtor, being a defendant in the recognised court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or
 - d. if the judgment debtor, being a defendant in the recognised court, was at the time when the proceedings were instituted, resident in, or being a body corporate was registered under the laws of, the country of that court; or
 - e. if the judgment debtor, being a defendant in the recognised court, had an office or a place of business

²⁴⁹ Section 171 of ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

²⁵⁰ <https://www.adgm.com/doing-business/adgm-courts/memoranda-of-understanding/>

²⁵¹ Rule 297(b) of ADGM Court Procedure Rules 2016.

²⁵² Section 172(3) of ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

²⁵³ Section 175(2) of ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place.

9. The courts do not re-examine the merits of a foreign judgment, which means that a foreign judgment may not be challenged on the ground that it contains an error of fact or law. However, the registration of the foreign judgment:²⁵⁴
 - a. shall be set aside if the Courts are satisfied that:
 - i. where the judgment was given in default, the judgment debtor was not duly served with the documents which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
 - ii. the judgment was obtained by fraud;
 - iii. the rights under the judgment are not vested in the person by whom the application for registration was made;
 - iv. the judgment is contrary to public policy in the Emirate of Abu Dhabi or ADGM; or
 - v. the proceedings were conducted in a manner which the courts considers as contrary to the principles of natural justice;
 - b. may be set aside if the courts are satisfied that the matter in dispute in the proceedings in the recognised court had previously, to the date of the judgment, been the subject of a final and conclusive judgment by another court having jurisdiction in the matter.

The procedures for enforcement of a recognised court judgment in ADGM Courts

10. In order to enforce a judgment of a recognised court in ADGM Courts, a judgment creditor must file a claim form supported by a witness statement setting out the following:²⁵⁵
 - a. the name of the judgment creditor and his address for service within ADGM;
 - b. the name of the judgment debtor and his address or place of business, if known;
 - c. confirmation that the judgment is a money judgment;
 - d. the amount in respect of which the judgment remains unsatisfied;
 - e. the grounds on which the judgment creditor is entitled to enforce the judgment;
 - f. whether the judgment can be enforced by execution in the country where it was given;
 - g. (where the judgment contains different provisions, some but not all of which can be registered for enforcement, details of those provisions in respect of which it is sought to register the judgment;
 - h. where interest is recoverable under the State in which the judgment was given:
 - i. the law of that State under which interest has become due under the judgment;
 - ii. the amount of interest which has accrued up to the date of the application;
 - iii. the rate of interest, the date from which it is recoverable and the date on which it ceases to accrue; and

²⁵⁴ Section 175(1) of *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*

²⁵⁵ Practice Direction 10 of the *ADGM Courts Procedure Rules 2016*

- i. any matter which, if the judgment debtor was represented, the judgment debtor would wish ADGM Courts to be aware of. This includes any matters which might tend to undermine the judgment creditor's application,

and attaching a certified copy of the judgment of the recognised court.

11. Following the granting of a registration order by ADGM Courts, the judgment creditor must serve the registration order on the judgment debtor within 21 days after the date of the order or within such other period as the Court may order.²⁵⁶
12. Under the English common law, where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum. The creditor may bring a claim to enforce that obligation as a debt in the domestic court. To be enforced, the foreign judgment must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
13. To enforce the foreign judgment, the judgment creditor will be required to commence a new case so as to obtain a judgment of ADGM Courts. However, unless the judgment debtor can satisfy the court that it has a real prospect of establishing at trial a ground for challenging the foreign judgment, the person who has obtained the judgment will in most cases be entitled to apply for summary judgment (or apply for a default judgment if the judgment debtor does not file, as applicable, an acknowledgment of service or a defence).
14. A foreign judgment may be challenged:
 - a. for want of jurisdiction;
 - b. for fraud;
 - c. on the grounds that its enforcement

- or recognition would be contrary to public policy; or
- d. if the proceedings in which it was obtained involved a substantial denial of natural justice. Reciprocity is not a requirement at common law. ADGM Courts will not enforce certain types of foreign judgments, for example judgments ordering the payment of taxes or other charges of a like nature.

Enforcement remedies

15. If the claim for registration of a foreign judgment is successful, or a successful claim is brought on the foreign judgment at common law, the judgment creditor will then have the benefit of an ADGM Courts judgment. The judgment creditor will be entitled, if necessary, to use the procedures of ADGM Courts for enforcing the judgment, including by means of:²⁵⁷
 - a. taking control of goods;
 - b. attachment of earnings;
 - c. obtaining a third party debt order;
 - d. charging orders;
 - e. orders for:
 - i. possession of land;
 - ii. sale of land or other property over which the judgment creditor has the benefit of a charge;
 - iii. requiring judgment debtors to provide information about their assets;
 - iv. appointing enforcement officers to seize and sell the judgment debtor's goods;
 - v. appointing receivers; or
 - vi. relating to insolvency procedures.
 - vii. orders relating to insolvency procedures.

²⁵⁶ Rule 300 of *ADGM Court Procedure Rules 2016*

²⁵⁷ Practice Direction 10 of the *ADGM Courts Procedure Rules 2016*

Bahrain, Kingdom of

1. Foreign judgments and orders are enforced in Bahrain in accordance with Article 252 of the Civil Procedure Code No. 12 of 1971 and will be enforced in the same way as a Bahraini judgment after receiving an order of enforcement from the Bahraini Higher Civil Court.
1. The order will be given after the court is satisfied that:
 - a. Bahraini courts have no jurisdiction over the dispute and the foreign court that issued.
 - b. The judgment has jurisdiction in accordance to the principles of conflict of laws applicable to its laws.
 - c. The papers show that the parties have been properly notified and correctly represented.
 - d. The judgment is certified by the court that passed it to be final and conclusive in accordance to its laws.
 - e. The foreign judgment does not contradict a Bahraini judgment and does not contravene public policy.
2. Once an order for enforcement is given by the Higher Civil Court, the applicant will apply to the enforcement court for the enforcement of the judgment through seizing of assets and other appropriate orders in accordance with Bahraini Civil Procedures Code. The applicant applies to the court with the following documents:
 - a. Certified copy of the judgment including an Arabic translation. (stamped by the ministry of foreign affairs of the country where judgment was issued, the Bahraini embassy in that country and the ministry of foreign affairs in Bahrain).
 - b. Certificate issued from the foreign court stating that the judgment is final and conclusive and thus not subject to any appeal, including an Arabic translation.
 - c. Name and address of the parties including phone number and emails as well as ID of the applicant. In case any of the parties is a company then certificate of incorporation (translated if necessary).
 - d. If the application is submitted by an agent then a notarized power of attorney must be attached.
 - e. Payment of fees which is 1% of the total judgment amount.

Dubai

Dubai International Financial Centre Courts

1. In order to be sued upon in the Dubai International Financial Centre (DIFC) Courts, a foreign judgment must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
2. The DIFC Courts will not enforce certain types of foreign judgments, for example judgments ordering the payment of taxes, fines or penalties.
3. The foreign court which had issued the foreign judgment must have had jurisdiction to determine the dispute, according to the DIFC rules on the conflict of laws. The DIFC Courts will generally consider the foreign court to have had the required jurisdiction only where the person against whom the judgment was given:
 - a. was, at the time the proceedings were commenced, present in the jurisdiction;
 - b. was the claimant, or counterclaimant, in the proceedings;
 - c. submitted to the jurisdiction of the Commercial Court; or
 - d. agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court.
4. Where the above requirements are established to the satisfaction of the DIFC Courts, a foreign judgment may be challenged in the DIFC Courts only on limited grounds. Those grounds include (but are not limited to):
 - a. where the judgment was obtained by fraud;
 - b. where the judgment is contrary to public policy; and
 - c. where the proceedings were conducted in a manner which the DIFC Courts regard as contrary to the principles of natural justice.
5. The DIFC Courts will not re-examine the merits of a foreign judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A foreign judgment will be enforced on the basis that the defendant has a legal obligation, recognised by the DIFC Courts, to satisfy a foreign judgment.

Outline of procedural steps

6. In order to enforce a foreign judgment in the DIFC Courts, a party must issue a Claim Form in the DIFC Courts, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the Claim Form.
7. Under Rule 9.53 of the Rules of the DIFC Courts 2014, there is no requirement to obtain the permission of the DIFC Courts before serving proceedings outside the DIFC. However, it remains open to the defendant to challenge the jurisdiction of the DIFC Courts.

8. If, following service, the defendant does not respond to the claim, the claimant will be entitled to obtain judgment in default under Part 13 of the Rules of the DIFC Courts 2014.
 9. If the defendant acknowledges service, the claimant must file and serve Particulars of Claim, setting out a concise statement of the facts relied on in support of the claim. The Particulars of Claim should contain a statement that the foreign court had jurisdiction on the grounds set out in paragraph 3 above.
 10. In most cases, a party will be entitled to apply to obtain summary judgment without trial under Part 24 of the Rules of the DIFC Courts 2014, unless the debtor can satisfy the Court that it has a real prospect of establishing at trial one of the grounds set out in paragraph 4 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
 11. If the claim on the foreign judgment is successful, the judgment creditor will then have the benefit of a DIFC Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the DIFC Courts to enforce the judgment, including:
 - a. third-party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - b. charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - c. orders for possession of land;
 - d. orders for sale of land or other property over which the judgment creditor has the benefit of a charge;
 - e. orders requiring judgment debtors to provide information about their assets;
 - f. orders appointing enforcement officers to seize and sell the judgment debtor's goods;
 - g. orders appointing receivers;
 - h. orders for committal for contempt of court; and
 - i. orders relating to insolvency procedures.
- Memoranda of guidance signed by the DIFC Courts with the courts of other countries*
12. The DIFC Courts are no stranger to the concept of the memorandum of guidance (MOG). Since 2013, the DIFC Courts have signed MOGs with the courts of different countries for two purposes:
 - a. The first is to establish clearly that the DIFC Courts' judgments will be recognised and enforced in the countries with whom the DIFC Courts sign MOGs.
 - b. The second is to provide information to the legal and business communities in Dubai and the MOG counterpart country on the differences (if any) between recognition and enforcement principles and procedures of the two countries.
 13. The first MOG was signed by the DIFC Courts with the Commercial Court of England and Wales in 2013. Since then, the DIFC Courts have signed 10 other MOGs with the following courts:
 - a. New South Wales Supreme Court
 - b. Federal Court of Australia
 - c. High Court of Kenya
 - d. United States District Court for the Southern District of New York
 - e. Supreme Court of Singapore
 - f. The Supreme Court of the Republic of Kazakhstan
 - g. The National Court Administration of the Supreme Court of Korea
 - h. The Federal Court of Malaysia
 - i. The High Court of Zambia
 - j. The High Court of Hong Kong

14. Where the courts of certain countries have been reluctant to sign a formal MOG for diverse internal reasons (such as China, Japan and India), the DIFC Courts work with prominent law firms in those countries to develop Guidance Notes, replicating the formula on the information contained in the regular MOGs. One example is the Guide on Recognition and Enforcement of Civil and Commercial Judgments in the PRC Courts and the DIFC Courts.
15. The MOGs signed with the courts of non-common law countries are particularly useful in explaining the differences in principles and procedures of recognition and enforcement of foreign judgments in the two territories concerned. Several of the non-common law MOG countries have treaties with the United Arab Emirates (UAE) providing for the mutual recognition and enforcement of judgments, which gives more clarity and certainty about enforcement principles and practice. Such treaties are applicable to the DIFC Courts because the DIFC Courts are recognised as part of the national judicial system of Dubai and the UAE. However, the DIFC Courts' MOG with the Supreme Court of Korea does not have a treaty basis with the UAE but has relatively straightforward principles of recognition and enforcement. This demonstrates that, even without a treaty, a MOG with a civil law country is possible and useful to the legal and business community.

Qatar

Qatar International Court

Introduction

1. This statement below does not create any binding legal obligations. It does not constitute a treaty or legislation, is not binding on any judicial officers and does not supersede any existing or future laws, judicial decisions or court rules. It is not intended to be exhaustive; create or alter any existing or future legal rights or relations; or create any binding arrangements for the enforcement of money foreign judgments.
2. It is concerned only with judgments requiring a person to pay a sum of money to another person.
- b. Civil and commercial disputes arising between QFC authorities or institutions and the entities established therein.
- c. Civil and commercial disputes arising between entities established in the QFC and contractors therewith and employees thereof, unless the parties agree otherwise.
- d. Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of the State, or entities established in the State but outside the QFC, unless the parties agree otherwise.

Qatar International Court and Dispute Resolution Centre

3. The Qatar International Court and Dispute Resolution Centre (QICDRC) comprises the Qatar International Court (otherwise known as the QFC Civil and Commercial Court) and the QFC Regulatory Tribunal – judicial bodies established pursuant to the relevant provisions of QFC Law No. 7 of 2005 (as amended).
4. The Qatar International Court consists of a first instance circuit and an appellate circuit. According to Article 8(3)(C) of the QFC Law, the first instance circuit has the jurisdiction to hear the following disputes:
 - a. Civil and commercial disputes arising from transactions, contracts, arrangements or incidences taking place in or from the QFC between the entities established therein.

The requirements for enforcing foreign judgments

5. In all cases, judgments of foreign courts which are capable of enforcement by the Qatar International Court will be enforced in accordance with the relevant provisions of the QFC Law and the Regulations and Procedural Rules of the Qatar International Court.
6. Where there is no applicable treaty as to the enforcement of judgments, the principles that will be applied to determine whether a party may sue on a judgment of a foreign court in the Qatar International Court are as follows. Where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another (i.e. a money judgment), a legal obligation arises on the debtor to pay that judgment debt. The legal obligation to pay is separate

from the underlying cause of action that gave rise to the judgment. The creditor may then bring a claim to enforce that obligation as a debt.

7. In order to be sued upon in the Qatar International Court, the foreign judgment must be final and conclusive on the merits of the case, and for a fixed or ascertainable sum of money. The fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive.
8. The Qatar International Court will not enforce a foreign judgment which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law, or an order that the person against whom the judgment was given is to do anything else apart from the payment of the judgment sum.
9. The foreign court must have had jurisdiction, according to the conflict of laws rules determined to be applicable by the Qatar International Court, to determine the subject matter of the dispute. The Qatar International Court will generally consider the foreign court to have had the required jurisdiction only where the person against whom the judgment was given:
 - a. was, at the time when the proceedings were commenced, present or resident in the jurisdiction of the foreign court;
 - b. was the claimant or counterclaimant in the proceedings;
 - c. submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings; or
 - d. agreed, before the commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court
10. Where the above requirements are established to the satisfaction of the Qatar International Court, a foreign judgment may be challenged before the Qatar International Court only on limited grounds. Those grounds include, but are not limited to:
 - a. where the judgment was procured by fraud;
 - b. where the enforcement of the judgment would be contrary to public policy; and
 - c. where the proceedings in which the judgment was obtained were conducted in a manner which the Qatar International Court regards as contrary to the principles of natural justice.
11. The Qatar International Court will not re-examine the merits of a judgment of the foreign court. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the foreign court will be enforced on the basis that the judgment debtor has a legal obligation, recognised by the Qatar International Court, to satisfy a judgment of the foreign court.

The procedure for the enforcement of foreign judgment in the QICDRC

12. The procedure for enforcing foreign judgments in the Qatar International Court is as stipulated by the relevant provisions of the QFC Law and the Regulations and Procedural Rules of the Qatar International Court, as they apply to the bringing and conduct of actions in the Court.
13. In order to enforce a foreign judgment in the Qatar International Court, the claimant must commence proceedings within the jurisdiction of the Court an action on the basis of the foreign judgment. The claim shall be accompanied by a certified copy of the judgment. It must be served on the defendant in the usual way, in accordance with the rules.
14. There is no requirement to obtain the permission of the Qatar International Court before serving proceedings outside the jurisdiction. However, it remains open to the judgment debtor to challenge the jurisdiction of the Qatar International Court.
15. The Court will give directions for the determination of the claim. In many cases, the claimant will be entitled to obtain summary judgment pursuant to Practice Direction 2/2019 if the Court considers that justice so requires.
16. If the claim on the foreign judgment is successful, the judgment creditor will then have the benefit of a Qatar International Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the Court to enforce the judgment.
17. Both the Court and QFC Regulatory Tribunal are served by an Enforcement Judge. The Enforcement Judge, who, at present, is also a judge in the domestic Qatari courts, is appointed to both judicial bodies in accordance with the provisions of the QFC Law. He exercises his powers in accordance with the relevant provisions of the QFC Law and the Regulations and Procedural Rules of the Court and QFC Regulatory Tribunal – as to which, see below.
18. The rules relating to the enforcement of judgments and orders are provided for by virtue of Article 34 of the Regulations and Procedural Rules of the Court, which covers judgments and orders of the Qatar International Court.
19. The Court has the power to enforce its own judgments and orders (as well as deal with contraventions of the same) by (i) the imposition of financial penalties, (ii) the making of any order which the Court considers is necessary in the interests of justice and (iii) referring the matter to a relevant competent agency or authority of the State.
20. In addition to the general powers referred to above, the Enforcement Judge, subject to paragraph 21 below, has the full range of specific powers available to him that are available under the domestic laws of Qatar. These include the following:
 - a. attachment of the property of the judgment debtor;
 - b. the sale of property which is subject to attachment;
 - c. the seizure of money (for example from bank accounts or by way of attachment to earnings);
 - d. issuing precautionary or interim measures (such as freezing orders); and
 - e. the imposition of restrictions on travel abroad.

21. It is not the practice of the Court or QFC Regulatory Tribunal to order imprisonment for failure to pay a judgment debt.
22. Applications seeking enforcement of a judgment or order should be filed with the Registry of the Court and will be considered by the Enforcement Judge.
23. Ordinarily, applications for enforcement should also be served on the other party, which will be given the opportunity to make representations in response.
24. Unless the Enforcement Judge considers that an oral hearing is necessary, applications for enforcement will be determined on the papers.
25. Similar provisions to those outlined above apply to decisions of the QFC Regulatory Tribunal – see Article 25 of the Regulations and Procedural Rules of the QFC Regulatory Tribunal.

Contacting the QICDRC

26. Further information about the QICDRC can be obtained:
 - a. by visiting the website of QICDRC at www.qicdrc.com.qa
 - b. by contacting the QICDRC Registry:
 - i. at Registry, QICDRC, PO Box 13667, QFC Tower 2, Omar Al Mukhtar Street, Doha, Qatar
 - ii. by telephone at +974 4496 8225
 - iii. by email at Registry@QICDRC.gov.qa



