



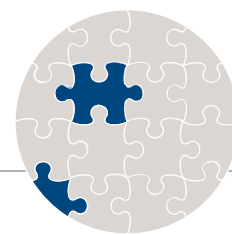
Cross-border disputes

International asset recovery/enforcement

COVID-19: Enforcing judgments and awards worldwide during and following a global pandemic

A. Background and summary

1. Parties are finding it more difficult to meet payment or other contractual obligations as a consequence of the pandemic. That will inevitably lead to an increase in disputes.
2. In turn, this will not only mean that there will be more Court judgments and arbitration awards, but also that a higher proportion of them will be breached or remain unsatisfied.
3. Where judgment debtors or their assets are located abroad, international enforcement may become a necessary step.
4. Before a foreign judgment/award may be enforced however, it will generally first have to be “domesticated” (i.e. rendered enforceable locally). In this respect:
 - The legal criteria which are to be met in the “**enforcing country**”, the defences that may be available, and the types of remedies that can be enforced, vary from country to country to country. They will depend upon any relevant international agreements or understandings which the enforcing country has with the country in which the judgment/award was obtained (the “**country of origin**”) and/or local law.
 - The same is also true of the procedural mechanisms by which such judgments/awards are “domesticated”. Those mechanisms may require steps to be taken in the country of origin, in the enforcing country, or in both.
 - It may be that not all of the “domestication” mechanisms are operating in the enforcing country during the pandemic. Further, any local (or perhaps even foreign) rules imposing temporary debt moratoriums might prevent or suspend the enforcement of judgments, or result in the exercise of a judicial discretion not to enforce, for example on public policy grounds.
 - Even once the virus has sufficiently subsided – in the country of origin and/or in the enforcing country as may be necessary – “domestication” of the judgment/award may take longer than usual in view of the likely backlog, and judgment debtors may be more likely to challenge it, in order to “buy time” and/or avoid payment or other compliance altogether.



5. Further, once “domesticated”, the judgment/award will still need to be enforced. Some means of enforcement (a matter for local law) may be temporarily suspended and, as time elapses, target assets may dwindle or prove harder to locate as the economic implications of the pandemic bite. Conversely however, enforcement options may increase as businesses begin to recover.
6. Whilst a judgment creditor must be proactive (and in some instances speed may be of the essence), it should adopt a considered, measured and pragmatic approach, taking account of all the circumstances, bearing in mind the following:
 - The judgment debtor may have been unable to make payment, or otherwise to comply, solely because of the virus and through no fault of its own (indeed, this might have been a sufficient legal, commercial or other reason not to bring the claim in the first place and/or may be sufficient reason not to enforce it, including bearing in mind government guidance such as that issued by the UK Cabinet Office¹). Further, the judgment debtor may recover in the relatively short term and thus make payment of its own volition.
 - On the other hand, the default of the judgment debtor may be entirely unrelated to the virus (indeed, it may even be using the pandemic unjustifiably to delay or avoid payment), and/or the judgment creditor may itself be in dire need of the cash to which it is entitled in order to satisfy its own commitments.
 - A judgment debtor is likely to have outstanding payment obligations in respect of other unsatisfied judgments or debts too.
 - From a financial perspective, the liquidation of the judgment debtor may be an option for the judgment creditor (although in some instances it may be temporarily prevented from triggering insolvency proceedings in view of COVID-19²). However, liquidation could equally have adverse implications.
 - It may be in the judgment creditor’s interests, from a business perspective, for the judgment debtor to survive.
 - The judgment creditor may wish to continue to trade with the judgment debtor or, conversely, it may be that there is no ongoing relationship.
 - The approach that a judgment creditor adopts may have reputational impacts.
7. The effects of COVID-19 will continue for some time to come, and the importance of international enforcement will only grow as the economic consequences of the pandemic emerge.
8. This note highlights some of the issues arising, and considers the options available, as regards:
 - the enforcement in England and Wales of foreign Court judgments and international arbitration awards; and
 - the enforcement abroad of Court judgments and arbitration awards obtained in England and Wales,both during, and following, the global pandemic. It also provides some commercial and practical guidance in this regard during these difficult times.

¹ See the second para of footnote 19 below.

² As regards the UK’s plans in this respect, see the first para of footnote 19 below.



B. International agreements to which the UK is a party

9. The UK is party to various international agreements which concern *inter alia* the enforcement in the UK of the judgments of other contracting countries, and of UK judgments in those countries³. These include the following:

- The Recast Brussels I Regulation⁴: This applies to monetary and non-monetary judgments and provisional, including protective, measures (but not interlocutory procedural orders). It is applicable as between the UK and the 27 EU Member States⁵.
- The Lugano Convention⁶: This applies to monetary and non-monetary judgments and provisional, including protective, measures (but not interlocutory procedural orders). It is applicable as between the UK and Iceland, Norway and Switzerland⁷.
- The Hague Convention on Choice of Court Agreements⁸: This provides for the enforcement by contracting states of monetary and non-monetary judgments (but not interim measures of protection) given by the Courts of other contracting states which the parties had agreed were to have “exclusive jurisdiction”⁹. It is currently applicable as between the UK and three of the signatory countries (specifically Mexico, Montenegro and Singapore¹⁰)¹¹.
- Other bilateral treaties: These generally apply to monetary judgments only. They are applicable as between the UK and the various individual countries.

In addition, there are a number of other countries¹² for which the existence of equivalent provisions to the UK as regards mutual enforcement of monetary judgments has been confirmed.

3 As regards the judgments of the Courts of countries within the UK, Part II of the Civil Jurisdiction and Judgments Act 1982 (the “CJJA”) and Schedules 6 and 7 apply. As regards the UK Territory of Gibraltar, Part IV of the CJJA and the Civil Jurisdiction and Judgments Act 1982 (Gibraltar) Order 1997 (the “CJJA Gibraltar Order”) apply.

4 Regulation (EC) No 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the “Recast Brussels I Regulation”).

5 Although this is an EU Regulation, it is still applicable in the UK, and in EU Member States in respect of the UK, as regards judgments given in proceedings commenced before the end of the Brexit Transition Period as if the UK were still an EU Member State. It takes precedence over other international agreements, such as the Hague Convention on Choice of Court Agreements.

It is not yet clear what the position will be in respect of Court judgments given in proceedings commenced after the end of the Brexit Transition Period. One possibility is that the UK becomes a party in its own right to the Lugano Convention, to which the EU Member States and Iceland, Norway and Switzerland are party, although that would require the consent of all of them.

6 The Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 2007 (the “Lugano Convention”).

7 The UK is still applying this Convention in respect of Iceland, Norway and Switzerland, and they are still applying it in respect of the UK, during the Brexit Transition Period (despite the fact that the UK was party to it in its capacity as an EU Member State).

8 The Hague Convention on Choice of Court Agreements of 30 June 2005 (the “Hague Convention on Choice of Court Agreements”).

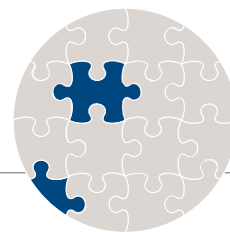
9 Note that a new Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, which applies to monetary and non-monetary judgments (but not interim measures of protection) where there is no such exclusive choice of Court agreement, was finalised on 2 July 2019. Currently, only Ukraine and Uruguay are signatories, and it has not yet come into force.

10 This Convention has also been signed by China, Ukraine and the USA, although it is not yet in force in those countries.

11 The UK is still applying this Convention, and the other contracting states who are bound by it have been asked to apply it in respect of the UK, during the Brexit Transition Period (despite the fact that the UK was party to it in its capacity as an EU Member State).

The UK will accede to this Convention in its own right such that, following the end of the Brexit Transition Period, the Convention continues to apply in the UK, and will be applied by EU Member States (in the absence of any alternative agreement between the UK and EU Member States), and by other contracting states, in respect of the UK. However, because of the transition as to the capacity in which the UK is a signatory, it may be that other contracting states would not be bound to apply it where the relevant choice of UK (English) Court agreement was entered into before the UK’s accession in its own right takes effect – see Article 16. There are also some circumstances in which the Convention will not be applied in EU Member States, because of the residence of the parties – see Article 26.

12 Broadly, countries that historically were either British dominions (with reciprocal provisions in respect of the registration of English, Scottish and Irish judgments) or territories under British protection or being administered under mandate.



10. As regards the enforcement of international arbitration awards, the UK is party to the following:

- The New York Convention¹³: This applies to arbitral awards and is applicable in contracting states to that Convention¹⁴.
- The ICSID Convention¹⁵: This applies to ICSID awards and is applicable in contracting states to that Convention¹⁶.

C. Enforcement in England and Wales of foreign Court judgments and international arbitration awards

Enforceability

11. The legal criteria to be met before a foreign judgment/award may be enforceable in the Courts of England and Wales, the defences that may be available, and the types of remedies that can be enforced (the detail of which are all beyond the scope of this note) will depend upon:

- whether the judgment is a Court judgment or an arbitration award (and if the latter, what type); and/or
- in which country the judgment/award was obtained; and/or
- what type of entity the judgment debtor is.

12. That is because those factors will affect:

- whether any international agreements (to which the UK is also a party)¹⁷, and/or any UK statutes/statutory instruments¹⁸, apply (and, if so, which one(s)); and/or
- whether the common law of England and Wales is applicable instead.

13. When deciding whether to render a foreign judgment/award enforceable in England and Wales, in some instances the Courts might apply, or have regard to, any relevant rules imposing debt moratoriums during the pandemic. There are currently no such rules in England and Wales which legally prevent the recovery of debts or the enforcement of judgment/awards *per se*¹⁹, but any such foreign rules (and/or possibly other guidances) that are relevant might in theory come into play, for example when considering public policy issues or when exercising any discretion. However, the extent to which such rules (and/or guidances) have an application, or are deemed relevant considerations, and if so in what circumstances, remains to be seen.

¹³ The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "**New York Convention**").

¹⁴ There are over 160 contracting states to the New York Convention.

¹⁵ The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (the "**ICSID Convention**").

¹⁶ Over 150 signatories have ratified the ICSID Convention.

¹⁷ Such as the Recast Brussels I Regulation, the Lugano Convention, the Hague Convention on Choice of Court Agreements, the various bilateral treaties mentioned above, the New York Convention and the ICSID Convention.

¹⁸ Such as the CJJA, the CJJA Gibraltar Order, the Foreign Judgments (Reciprocal Enforcement) Act 1933 ("**FJ(RE)A**"), the Administration of Justice Act 1920 ("**AJA**"), the Arbitration (International Investment Disputes) Act 1966 (the "**A(IID)A**"), the Arbitration Acts of 1950, 1975 and 1996 and, in the case of judgments/awards against States, the State Immunity Act 1978 (the "**SIA**") and Section 31 of the CJJA.

¹⁹ A number of insolvency-related protections are to be introduced however, e.g. to prevent the triggering of insolvency proceedings by means of statutory demands based on debts which only arise as a matter of COVID-19.

Further, the UK Cabinet Office has issued non-statutory guidance for parties, in both the public and private sectors, to contracts impacted by the COVID-19 emergency. The note is headed "*Guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the COVID-19 emergency*" – see: <https://www.gov.uk/government/publications/guidance-on-responsible-contractual-behaviour-in-the-performance-and-enforcement-of-contracts-impacted-by-the-covid-19-emergency>.



The “domestication” procedure

14. The procedural mechanisms by which such judgments/awards are rendered enforceable likewise depend upon the factors mentioned above. In broad terms, the various mechanisms comprise the following, depending upon the circumstances at hand:
- the (mere) provision of requisite documents to the Court²⁰ - for the judgments of the Courts of EU Member States²¹;
 - » a “registration” procedure – for:
the Court judgments of other countries:
 - (1) with which there is an applicable Convention or bilateral agreement; or
 - (2) which historically were either British dominions (with reciprocal provisions in respect of the registration of English, Scottish and Irish judgments) or territories under British protection or being administered under mandate²²;
 - » ICSID awards²³; and
 - » arbitration awards in certain countries²⁴ where the award has, under the law in force in the place in which it was made, become enforceable in the same manner as a judgment given by a Court in that place²⁵;
 - a procedure for the obtaining of permission to enforce arbitration awards other than ICSID awards²⁶;
 - the commencement of a fresh claim, under the common law, based on a foreign judgment/award debt.

20 The need for “exequatur” - i.e. the need for formal “domestication” by means of registration of the judgment (in the UK) or the obtaining of a “declaration of enforceability” (in other EU Member States) which was previously required under the Brussels I Regulation (EC) No 44/2001 - was removed when it was re-cast. The Lugano Convention has not yet been amended in that way.

21 Pursuant to the Recast Brussels I Regulation, and CPR rule 74.4A and paras 4.1 and 6.1 of Practice Direction 74A.

22 For example:

- pursuant to Part II of the CJA and Schedules 6 and 7, and CPR rules 74.15 – 74.16 and paras 4.1(2) and 8.1 of Practice Direction 74A; or
- pursuant to:
 - » Section 4 and Part IV of the CJA, and the Civil Jurisdiction and Judgments Act 1982 (Gibraltar) Order 1997;
 - » the Lugano Convention and Section 4A of the CJA;
 - » the Hague Convention on Choice of Court Agreements and Section 4B of the CJA;
 - » Section 2 of the FJ(RE)A;
 - » Section 9 of the AJA 1920,

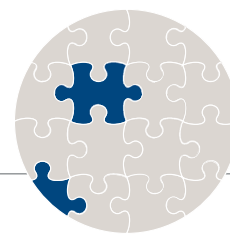
and CPR rules 74.3, 74.4 and 74.6 and paras 4.1(1), 4.4(1), 5, 6A and 6E of Practice Direction 74A.

23 Pursuant to Article 54 of the ICSID Convention, Section 1 of the A(IID)A, and CPR rule 62.21.

24 Any part of a British overseas territory or other territory to which Part I of the FJ(RE)A extends to which Part II of the AJA extended immediately before Part I of the FJ(RE)A was extended to that part.

25 Pursuant to Section 10A of the FJ(RE)A and CPR rule 62.20.

26 Pursuant to the New York Convention, the Arbitration Acts of 1950, 1975 or 1996, and CPR rules 62.18 - 62.19.



15. In some instances, it will also be necessary to have first taken certain steps in the country of origin, before the “domestication” process may be commenced. For example:
- for the judgment of a Court of an EU Member State to be enforced pursuant to the Recast Brussels I Regulation, a certificate²⁷ must first have been obtained from the Court of origin²⁸;
 - for the judgment of a Court to be enforced pursuant to the Lugano Convention a certificate would ordinarily first have to be obtained from the Court of origin²⁹;
 - for the judgment of a Court to be enforced pursuant to the Hague Convention on Choice of Court Agreements, a certified copy of the judgment is needed³⁰;
 - for an ICSID award to be enforced under the ICSID Convention, a copy of the ICSID award certified by the Secretary-General is needed³¹;
 - for an arbitration award to be enforced under the New York Convention, the original award must have been duly authenticated or a duly certified copy obtained³².
16. As regards the initial “domestication” steps to be taken in England and Wales (as the enforcing country), the Queen’s Bench Division of the High Court has issued a Guidance Note (the “**QBD Guidance Note**”)³³ which states that, in view of the pandemic:
- “Registration of Foreign Judgments**
- We are not able to process these at present.”*
17. The precise scope of this statement is unclear. However, it is likely to apply not only the processing of applications to register of foreign Court judgments, but also to:
- the enforcement of judgments of the Courts of EU Member States;
 - applications to register ICSID awards; and
 - applications for permission to enforce arbitration awards other than ICSID awards.
18. The statement does not, however, apply to fresh proceedings brought on a foreign judgment/award debt. However, that “domestication” mechanism is sometimes unavailable where an international agreement and/or statute/ statutory instrument applies to the enforcement of the foreign judgment/ award in question, and in any event it tends to be a more protracted process, and so would not generally be utilised where another mechanism is available.
19. Even once the initial step in the “domestication” procedure has been processed, that is not the end of the story. A judgment debtor still has the ability to contest the “domestication” process (albeit on limited grounds – the detail of which depends upon the applicable mechanism, and so is beyond the scope of this note). For example, it may do so:

27 In the form set out in Annex I.

28 Articles 42(b) and 53.

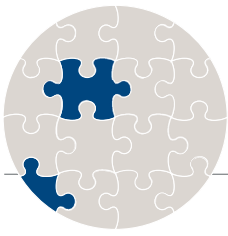
29 Articles 40(3) and 53-55.

30 Article 13(a).

31 Article 54(2).

32 Article IV(1).

33 HM Courts & Tribunals Service Coronavirus Update: “Coronavirus – Information for Queen’s Bench Division Court Users (Bulletin 5)”.



- in the case of Court judgments to be enforced under the Recast Brussels I Regulation, by applying for an order that the Court should refuse to enforce the judgment³⁴;
 - in the case of Court judgments to be enforced under the CJJA or the Lugano Convention, by appealing against the order granting the registration order³⁵;
 - in the case of registration orders (other than under the CJJA and the Lugano Convention) and orders granting permission to enforce, by seeking to have the order set aside³⁶;
 - in the case of proceedings based on the judgment/award debt, by defending those proceedings³⁷.
- Note also the potential for the Court to take into account any relevant rules imposing debt moratoriums during the pandemic (and/or possibly other guidances), as mentioned above.

20. This either will, or may, delay enforcement as follows:

- In the case of Court judgments to be enforced under the Recast Brussels I Regulation, if an application for refusal of enforcement is made then, upon the application of the judgment debtor, the enforcing Court may:
 - » limit the enforcement proceedings to protective measures;
 - » make enforcement conditional upon the provision of security; or
 - » suspend the enforcement proceedings in whole or in part.³⁸
- In the case of Court judgments to be enforced other than under the Recast Brussels I Regulation, and also in the case of arbitration and ICSID awards, judgment creditors must make their application/appeal (or take steps to defend the proceedings on the judgment/award debt) within a specified period. Pending the expiry of that period and the resolution of any application/appeal (or the relevant proceedings), the judgment/award cannot be enforced (and nor can judgment given on the judgment/award debt)³⁹.

34 CPR rule 74.7A(1) and paras 4.4(2A) and 6B of Practice Direction 74A, and Articles 46-48 of the Recast Brussels I Regulation - the (limited) grounds for refusal of enforcement are set out in Article 45. A decision granting or refusing that application may be appealed without permission – see CPR rule 74.7A(2)-(5) and Articles 49-50 of the Recast Brussels I Regulation.

35 CPR rule 74.8 – no permission is needed. See also e.g. Articles 43-45 of the Lugano Convention - the (limited) grounds for revoking (or initially refusing) registration are set out in Articles 34-35.

36 As regards registration orders pursuant to the Hague Convention on Choice of Court Agreements, the (limited) grounds for refusal (and thus the setting aside) of a registration order are set out in Article 9.

As regards registration orders pursuant to the FJ(RE)A and the AJA, see Articles 3(1)(d) and 4 of the FJ(RE)A, Article 9(4)(b) of the AJA, and CPR 74.7 and para 4.4(2) of Practice Direction 74A. The requirements a judgment debtor must meet and, if those are established, the (relatively limited) bases on which the registration of judgments must or may be set aside are set out in Sections 1(2)-(3) and 4 of the FJ(RE)A, and Sections 9(1)-(2) of the AJA respectively.

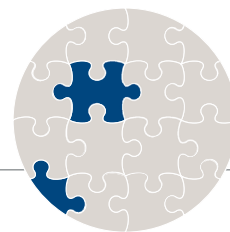
As regards registration orders in respect of ICSID awards see para [37] of the Judgment at first instance in *Micula & Ors v Romania & Anor* [2017] EWHC 31 (Comm) and also Article 54(1) of the ICSID Convention, Section 1 of the A(IID)A and CPR rule 62.21(2)(e). As regards the potential to refuse/ set aside or stay an application to register an ICSID Award, see the first instance decision in *Micula*, the Court of Appeal's Judgment at [2018] EWCA Civ 1801 and also the Supreme Court Judgment at [2020] UKSC 5.

As regards applications for permission to enforce arbitration awards other than ICSID awards, see the Arbitration Acts of 1950, 1975 and 1996 and CPR 62.18(2), (3) and (9). As regards the (limited) bases on which enforcement of an award may be refused see Article V of the New York Convention and the Arbitration Acts of 1950, 1975 and 1996.

37 There are established common law principles as to the requirements a judgment debtor must meet before it may succeed in such a claim and, if those are established, the (relatively limited) bases on which a judgment debtor may successfully defend it.

38 Article 44(1) of the Recast Brussels I Regulation.

39 See, as appropriate, Article 47(3) of the Lugano Convention, Article 14 of the Hague Convention on Choice of Court Agreements, Section 2(2) of the FJ(RE)A, Section 9(4)(c) of the AJA, and CPR rules 74.9(2), 62.18(9) and 62.21(2)(e), and as regards proceedings on a judgment/award debt, see the CPR more generally in relation to the determination of such proceedings.



21. If the judgment/award is itself subject to an appeal or an application has been made to set it aside or suspend it, and/or its enforceability is suspended (or may be suspended)⁴⁰ – potentially including in view of the pandemic – this will, or may, also lead to a suspension or stay of the enforcement proceedings in the Courts of England and Wales⁴¹.

Interim/protective relief pending enforcement

22. Pending the processing of the “domestication” process and/or any subsequent challenge however, it may be possible for a judgment creditor to obtain an order to preserve the property of the judgment debtor or for some other interim/protective relief⁴². In appropriate circumstances, a freezing order (domestic or perhaps worldwide)⁴³ may be obtained so as to prevent the dissipation of assets and obtain information about their existence/location, and/or it may be possible to obtain interim/protective relief from the Court of the country of origin.

23. When deciding whether to grant such relief, Courts are likely have regard to the impact of the pandemic on both the judgment creditor and the judgment debtor (and to any rules imposing debt moratoriums, and/or other guidances and their effect) in the situation at hand.

Means of enforcement

24. Once the “domestication” process is complete, the foreign judgment/award can be enforced as if it were the judgment of a Court of England and Wales using means available under local law⁴⁴. A wide variety of possible means are available in England and Wales⁴⁵, including:

- *Orders to Obtain Information from Judgment Debtors* – with a view to obtaining information about assets⁴⁶;
- *Third Party Debt Orders* (formerly known as “Garnishee Orders”)⁴⁷ – by which a third party (including, for example, a bank with whom a judgment debtor has deposited money) is obliged to pay direct to a judgment creditor monies that the third party owes to the judgment debtor;
- *Execution against goods*⁴⁸ – by which chattels would be seized and sold and the proceeds used to settle the judgment debt;

40 In/by the Court of origin (in the case of Court judgments), the appropriate Committee (in the case of ICSID awards), or a competent authority of the country in which or under the law of which it was made (in the case of other arbitration awards).

41 See, as appropriate, Articles 44(2) and 51(1) of the Recast Brussels I Regulation, Article 46(1) of the Lugano Convention, Articles 8(3)-(4) of the Hague Convention on Choice of Court Agreements, Section 5 of the FJ(RE)A, Section 9(2)(e) of the AJA, Section 2(2) of the Arbitration (International Investment Disputes) Act 1966, Article VI of the New York Convention, and CPR rule 62.21(5). In some instances, on the application of the judgment creditor, the judgment debtor may be ordered to give suitable security if there is to be a stay – see e.g. Article VI of the New York Convention. In the case of enforcement of a Court judgment under the Lugano Convention, the enforcing Court may also make enforcement conditional upon the provision of security by the judgment creditor (Article 46(3)).

42 See, as appropriate, Article 40 of the Recast Brussels I Regulation (and also note the Court’s powers under Article 44(1) as described above), Article 47 of the Lugano Convention, Article 14 of the Hague Convention on Choice of Court Agreements, Article VI of the New York Convention and CPR rule 74.9(4). In the case of a State however, note Section 13 of the SIA.

43 CPR rule 25.1(1)(f). In the case of a State, note Section 13 of the SIA.

44 See e.g. Articles 39 and 41 of the Recast Brussels I Regulation, Article 38 of the Lugano Convention, Article 8 of the Hague Convention on Choice of Court Agreements, Article Section 2(2) of the FJ(RE)A, Section 9(3) of the AJA, Articles 54(1) and (3) of the ICSID Convention and Article III of the New York Convention, and the Arbitration Acts of 1950, 1975 and 1996, including Sections 99 and 101(2) of the 1996 Act.

If enforcing against a State however, note Section 13 of the SIA.

45 Some of these currently may be suspended or impracticable.

46 CPR Part 71.

47 CPR Part 72.

48 CPR Part 83.



- *Charging Orders*⁴⁹ – by which there be imposed on e.g. real estate or securities owned by the judgment debtor a charge for securing the payment of monies due under the judgment;
- *Appointment of a Receiver by Way of Equitable Execution*⁵⁰ – by which a receiver be appointed to execute the judgment (generally where legal execution is not possible because of the nature of the judgment debtor’s interest in the property).

D. Enforcement abroad of Court judgments and arbitration awards obtained in England and Wales

Enforceability

25. Similarly, the legal criteria to be met before a judgment/award obtained in England and Wales may be enforced abroad, the potential defences, and the types of remedies that can be enforced will depend upon:
- whether the judgment is a Court judgment or an arbitration award; and
 - the country in which it is to be enforced, the international agreements to which both the UK and that country is a party⁵¹, and/or its local laws.
26. When deciding whether to render a judgment/award obtained in England and Wales enforceable locally, the foreign Court will (or may) apply, or have regard to, any relevant domestic (and perhaps even foreign) rules imposing debt moratoriums during the pandemic (and/or possibly other guidances, as mentioned above). Depending upon their scope, these could prevent or suspend the enforcement or the judgment/award.

The “domestication” procedure

27. The procedural mechanisms by which such judgments/awards are rendered enforceable likewise also depend upon those factors.
28. It may be that some or all of those are currently suspended in the enforcing country in view of the pandemic.
29. In addition however, certain steps might in any event also need to be taken first in England and Wales – for example to obtain a certificate or certified copy of the judgment⁵². It is not clear whether such applications are covered by the statement in the QBD Guidance Note, but it is likely that they are also not being processed at present.

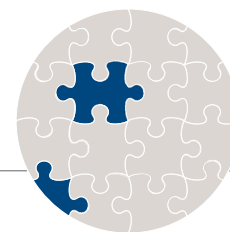
49 CPR Part 73.

50 CPR Part 69.

51 Such as the Recast Brussels I Regulation, the Lugano Convention, the Hague Convention on Choice of Court Agreements, the various bilateral treaties mentioned above and the New York Convention.

52 E.g.:

- pursuant to Part II of the CJJA and Schedules 6 and 7, and CPR rules 74.17 - 74.18 and paras 4.3, 4.4(4), 8.2 and 8.3 of Practice Direction 74A; or
- pursuant to:
 - » Articles 42(b) and 53 of the Recast Brussels I Regulation and Section 12 of the CJJA;
 - » Articles 40(3) and 53-55 of the Lugano Convention and Section 12 of the CJJA;
 - » Article 13(a) of the Hague Convention on Choice of Court Agreements;
 - » Section 10 of the FJ(RE)A;
 - » Section 10 of the AJA, and CPR rules 74.12 - 74.13 and paras 4.2, 4.4(3), 6D and 7 of Practice Direction 74A; or
- under local law; or
- pursuant to Article 54(2) of the ICSID Convention; or
- pursuant to Article IV(1) of the New York Convention.



30. Further, once the initial step in the “domestication” procedure has been processed, a judgment debtor may still have the ability to contest the “domestication” process⁵³ – perhaps including by asking the Court to apply, or take into account, any relevant domestic (and perhaps even foreign) rules imposing debt moratoriums during the pandemic (and/or possibly other guidances), as mentioned above. That either will, or may, delay enforcement.⁵⁴

Interim/protective relief pending enforcement

31. Pending the processing of the “domestication” process and/or any subsequent challenge, it may be possible to obtain interim/protective relief from the Court of the enforcing country⁵⁵ and/or – in limited circumstances – to obtain a worldwide freezing order⁵⁶ from the Courts of England and Wales (as the country of origin) in order to prevent the dissipation of assets and obtain information about their existence/location.

32. When deciding whether to grant such relief, Courts are likely have regard to the impact of the pandemic on both the judgment creditor and the judgment debtor (and to any rules imposing debt moratoriums, and/or other guidances, and their effect) in the situation at hand.

Means of enforcement

33. Once the “domestication” process is complete, the means by which the judgment/award may be enforced will depend upon the local law of the enforcing country⁵⁷. It may be, however, that some of the means ordinarily available are currently suspended or impracticable.

E. Commercial and practical points

34. There will inevitably be an increase in disputes as parties struggle to meet payment or other contractual obligations as a consequence of the pandemic.

35. That, in turn, will mean there will be more Court judgments and arbitration awards, and a higher proportion of those will remain unsatisfied.

36. Where judgment debtors or their assets are located abroad, international enforcement may become necessary.

53 E.g. pursuant to Articles 45-50 of the Recast Brussels I Regulation, Articles 34-35 and 43-45 of the Lugano Convention, Article 9 of the Hague Convention on Choice of Court Agreements, or pursuant to any relevant bilateral treaty, or Article V of the New York Convention, and/or pursuant to the local procedural law/ the exercise of local judicial discretion.

54 E.g. pursuant to Article 44(1) of the Recast Brussels I Regulation, Article 47(3) of the Lugano Convention, Article 14 of the Hague Convention on Choice of Court Agreements, and/or pursuant to local procedural law/ the exercise of local judicial discretion.

55 E.g. pursuant to Article 40 of the Recast Brussels I Regulation (and also note the Court’s powers under Article 44(1) as described above), Article 47 of the Lugano Convention, Article 14 of the Hague Convention on Choice of Court Agreements or Article VI of the New York Convention and/or pursuant to local procedural law/ the exercise of local judicial discretion.

56 CPR rule 25.1(1)(f). In the case of a State however, note Section 13 of the SIA.

57 See e.g. Articles 39 and 41 of the Recast Brussels I Regulation, Article 38 of the Lugano Convention, Article 8 of the Hague Convention on Choice of Court Agreements and Article III of the New York Convention.



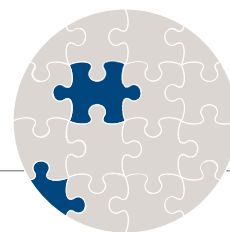
Guidance for judgment creditors

37. In that respect, a judgment creditor should be aware of the following:

- A judgment/award obtained in one country may, or may not, be enforceable in the country or countries in question (or one or more of them).
- Whether the judgment/award is enforceable in a particular country, and if so by what mechanism, will depend upon a number of factors, including:
 - » the nature/type of judgment/award;
 - » the country in which the judgment/award was obtained, the country in which it is to be enforced, and the international agreements between them;
 - » the type of entity the judgment debtor is;
 - » the remedy that is to be enforced.
- The mechanisms and processes by which judgments/awards given in one country are “domesticated” in another may not currently be operating in view of the pandemic.
- Further, any local (or perhaps even foreign) rules imposing debt moratoriums might prevent or suspend the enforcement of judgments, or result in the exercise of a judicial discretion “not to enforce, for example on public policy grounds.
- Even once the virus has, in the country of origin and/or in the enforcing country as may be necessary, sufficiently subsided:
 - » “domestication” of the judgment/award may take longer than usual in view of the likely backlog; and
 - » a judgment debtor may be more likely, whether during the pandemic or subsequently, to seek challenge the enforceability of foreign judgments and/or the “domestication” process, in order to “buy time” and/or avoid payment or other compliance altogether.
- Further, any local (or perhaps even foreign) rules imposing debt moratoriums might prevent or suspend the enforcement of judgments, or result in the exercise of a judicial discretion not to enforce, for example on public policy grounds.

38. A judgment creditor should take the following approach:

- It should be proactive, and taking preliminary steps to “domesticate” a judgment/award, and/or obtain interim/protective relief, may serve to demonstrate that it is serious and thereby prompt payment by a judgment debtor.
- In some instances, speed may be of the essence - for example:
 - » in order to preserve assets, or prevent their dissipation; and/or
 - » in order to seek to enforce ahead of other creditors, or before the judgment debtor goes into liquidation.
- However, a judgment creditor should adopt a considered, measured and pragmatic approach, taking account of all the circumstances.



- When designing its strategy, it will be important to bear in mind, amongst other things, the following:
 - » The judgment debtor may have been unable to make payment, or otherwise to comply, solely because of the virus and through no fault of its own (indeed, this might have been a sufficient legal, commercial or other reason not to bring the claim in the first place and/or may be sufficient reason not to enforce it, including bearing in mind government guidance such as that issued by the UK Cabinet Office). Further, the judgment debtor may recover in the relatively short term and thus make payment of its own volition.
 - » On the other hand, the judgment debtor's failures may have been unrelated to the pandemic (indeed it may even be using the pandemic unjustifiably to delay or avoid payment) and/or the judgment creditor may itself be in dire need of the cash to which it is entitled in order to satisfy its own commitments.
 - » A judgment debtor is likely to have outstanding payment obligations in respect of other unsatisfied judgments or debts too - and these may be domestic and more easily enforced and/or may be prioritised by the judgment debtor.
 - » From a financial perspective, the liquidation of the judgment debtor may be an option for the judgment creditor (although in some instances it may be temporarily prevented from triggering insolvency proceedings in view of COVID-19). However, liquidation could equally have adverse implications.
 - » It may be in the judgment creditor's interests, from a business perspective, for the judgment debtor to survive.
 - » The judgment creditor may wish to continue to trade with the judgment debtor – and so it may benefit the judgment creditor to adopt a conciliatory, rather than aggressive, approach; alternatively, it may be that there is no ongoing relationship.
 - » The approach that a judgment creditor adopts may have reputational impacts – whether in the business market or with customers – for example:
 - (1) adopting an understanding and conciliatory approach in an appropriate case may be met with market and client approval, but there is a risk it could encourage (unjustifiable) non-payment by others;
 - (2) conversely, pursuing enforcement might discourage (unjustifiable) non-payment by others, but such an approach might backfire if such steps were taken against a “blameless” entity which was struggling as a consequence of the pandemic but which might have recovered if given time.

Guidance for judgment debtors

39. A judgment debtor, by contrast, should be aware of the following:

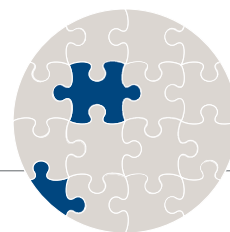
- A judgment/award may not be enforceable in the country in which it, and/or its assets, are located.
- Further, there may be local or foreign rules imposing debt moratoriums which might be relied upon with a view to seeking to prevent or suspend the enforcement of judgments/awards – for example on public policy grounds.
- Thus, a judgment debtor may be able to resist, or challenge, any attempted “domestication” or enforcement of a foreign judgments/award in such a country.



- In some instances, local Courts may have, and use, a discretion when it comes to:
 - » the domestication and/or enforceability of foreign judgments/awards;
 - » the means by which judgments/awards may be enforced; and/or
 - » timing issues.

40. When deciding how best to proceed, a judgment debtor should be alive to the following:

- In most circumstances, a judgment debtor should generally, where possible, satisfy and otherwise comply with judgments/awards made against it by a Court or tribunal of competent jurisdiction. That may be so for legal and/or commercial reasons (and it should bear in mind that interest, at a considerable rate in the current environment, may be accruing on amounts outstanding).
- Even where a judgment/award is not enforceable in the country in which it, and/or its assets, are located, there may be political or commercial reasons why a judgment debtor should still satisfy, or comply with, such an award.
- However, in an appropriate case, it may elect to resist, challenge, or seek to suspend, the enforceability of a foreign award/judgment locally, or make other submissions on timing, particularly in view of the unique circumstances of the pandemic (and any applicable rules imposing debt moratoriums).
- There may be instances in which it is appropriate to seek to negotiate an amicable resolution with a judgment creditor that is acceptable to both parties. The following may assist with any such negotiations:
 - » the reasons, if related to the pandemic, for the judgment debtor's failure to comply with its payment or other contractual obligations that resulted in the judgment/award;
 - » the judgment debtor's ongoing business relationship with the judgment creditor and its future;
 - » the potential reputational advantages for the judgment creditor of adopting an understanding and conciliatory approach in an appropriate case;
 - » the fact that some or all of the mechanisms and processes by which judgments/awards are "domesticated" and/or enforced may not currently be operating, and that these processes will take time;
 - » the uncertainty of the outcome of any attempt to "domesticate" the judgment award in the country in which the judgment debtor or its assets are located and/or of any challenge in that respect (including in view of any rules imposing debt moratoriums);
 - » the risk that the judgment creditor may be unable successfully to locate any, or sufficient, assets of the judgment debtor against which it may enforce;
 - » the risk that the judgment creditor will only recover a small proportion of the debt if the judgment debtor goes into liquidation;
 - » the fact that the judgment creditor may itself be short of cash and have debts of its own which it needs to settle;
 - » the value to the judgment creditor of receiving a portion of the debt owing now, instead of the full amount at some point in the future, bearing in mind the risks, and cost, that doing so may entail, and/or its own cash flow position.



Certainty in an uncertain world

41. These are uncertain times, but one thing is for sure: the international enforcement of judgments/awards will become an increasingly important issue as the economic consequences of the pandemic emerge.

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