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Enforcement of Foreign Judgments 2020

A practical cross-border insight into the enforcement of foreign judgments

Fifth Edition

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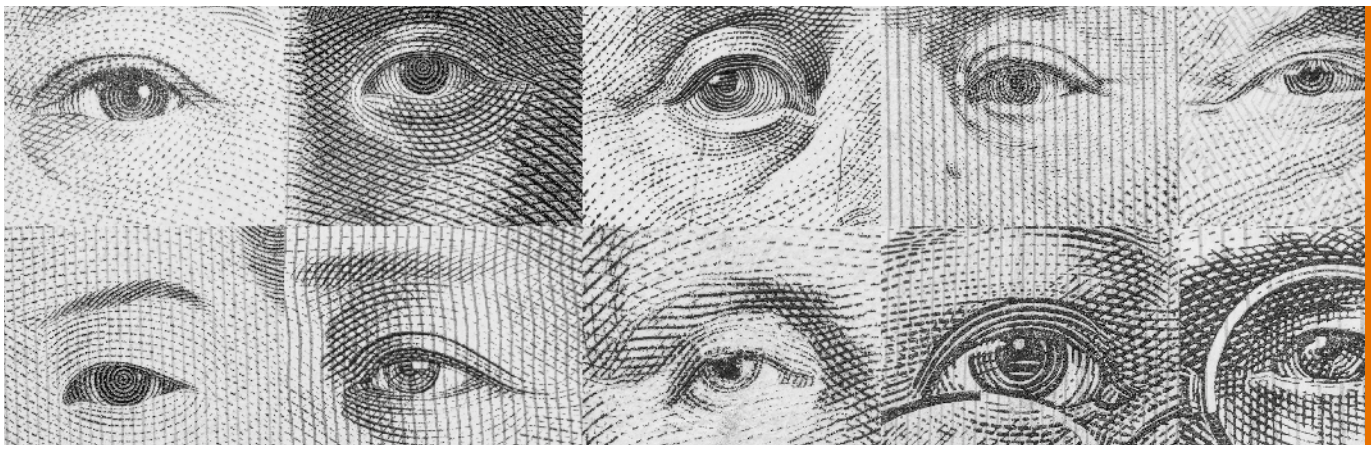

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
EU Regime*		
EU Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Recast Regulation) applicable to legal proceedings instituted on or after 10 January 2015.	All Member States of the EU (except Denmark).	See Chapter 2.
EU Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) applicable to judgments given in legal proceedings instituted before 10 January 2015.	All Member States of the EU.	See Chapter 2.
Convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 (Lugano Convention).	Iceland, Norway and Switzerland.	See Chapter 2.
Hague Convention on Choice of Court Agreements (Hague Convention).	All Member States of the EU and Mexico, Montenegro, and Singapore.	See Chapter 1 and question 5.1.
Statutory Regimes		
Administration of Justice Act 1920 ("AJA").	Many Caribbean countries/ former British dominions including Bermuda, British Virgin Islands, Cayman Islands; and several African nations including Ghana, Kenya, Nigeria, Uganda, Tanzania, Zambia and Zimbabwe. Other principal countries include Republic of Cyprus, Malta, New Zealand and Malaysia.	Section 3.
Foreign Judgments (Reciprocal Enforcement) Act 1933 ("FJA").	Mainly countries in the Commonwealth such as Australia, Canada (except Quebec), India, Guernsey, Jersey, Isle of Man, Israel, Pakistan, Suriname and Tonga.	Section 3.

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General Regime		
English common law regime.	Countries to which none of the above specific statutes/regulations apply including USA, China (including Hong Kong), Russia and Brazil.	Section 2.

* Please see Chapter 2 for further information on the EU recognition and enforcement regime. The EU Regime will apply in the UK until the end of 2020. Thereafter, the position is not yet known (see section 5.1 below).

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

The recognition and enforcement of foreign judgments in England and Wales which fall outside the scope of the special EU and statutory regimes listed above are dealt with under English common law.

The procedure for enforcement of such foreign judgments is set out in Part 74 of the English Civil Procedure Rules ("CPR").

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

In English law, a judgment is considered to be any judgment given by a court or tribunal, whatever it may be called. CPR 74.2(c) provides that a foreign "judgment" in the context of enforcement in England includes a decree, an order, a decision, a writ of execution or a writ of control, and a determination of costs by an officer of the court.

Similarly, the Lugano Convention (at Article 32), the Brussels Regulation (at Article 32) and the Brussels Recast Regulation (at Article 2(a)) all stipulate that "judgment" means any judgment given by a court or tribunal whatever a judgment may be called, including a decree, order, decision or writ of execution as well as the determination of costs or expenses. These instruments therefore do not preclude from their scope non-money judgments and interim orders, including injunctions.

The AJA (at section 12) provides that "judgment" means any judgment or order given or made by a court in any civil proceedings, whereby any sum of money is payable. The FJA has a similar definition at section 11, defining a judgment as a judgment or order given or made by a court in any civil or criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party. Accordingly, under these two Acts, as well as at common law, non-money judgments and interim orders, including injunctions, are not enforceable.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

As noted above, in order for a foreign judgment to be recognised and enforced at common law, it must be final, binding and conclusive. A foreign judgment is only considered final and binding where it would have precluded the unsuccessful party from bringing fresh proceedings in that foreign jurisdiction. If a foreign judgment is the subject of appeal in that jurisdiction, the English courts are likely to grant a stay on enforcement proceedings pending the outcome of that appeal.

The common law rules also require the judgment to be enforced to have been rendered by a court of competent jurisdiction, which is taken to mean one of the following:

a) the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country;
b) the person against whom the judgment was given was claimant, or counterclaimed, in the proceedings in the foreign court;
c) the person against whom the judgment was given submitted to the jurisdiction of that court by voluntarily appearing in the proceedings (which will not include submitting arguments on the merits where under local law, a challenge to jurisdiction can only be brought in conjunction with such arguments on the merits); or
d) the person against whom the judgment was given 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 that country.

Only final judgments for payment of a definite sum of money (save for taxes, fines or penalties) can be enforced under common law. This means, for example, that injunctions, interim orders and other judgments obtained from foreign courts for specific performance, payment into court or a declaration/dismissal of a claim/counterclaim can be recognised but cannot be enforced under English common law.

The English court can sever parts of a foreign judgment for the purposes of enforcement proceedings, i.e. it can enforce the payment obligations set out in the foreign judgment, disregarding any other parts of the foreign judgment which do not constitute an obligation to pay a specified sum of money. Therefore, the existence of other obligations in conjunction with those of a monetary payment does not necessarily exclude a foreign judgment from enforcement under the common law. However, enforcement of any part of a monetary payment obligation in a foreign judgment which has been calculated by multiplying a compensatory sum is not permitted.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

The courts of England and Wales have jurisdiction to decide on questions of enforcement at common law without any need to establish a degree of connection with England or Wales (CPR Practice Direction 3.1(10)). A court may, however, conclude that it is not the most convenient forum if there is no real connection to the jurisdiction.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Before a judgment can be enforced, it must first be recognised. The distinction is made for the reason that a judgment of a foreign court cannot operate outside of its own territorially circumscribed jurisdiction without the medium of the English courts.

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Therefore, all foreign judgments enforced by English courts are recognised, but not all recognised judgments are enforced. For example, a judgment *in rem* against an asset outside of England and Wales cannot be enforced for the reason that the assets fall outside of the jurisdiction of the English court; however, a party may seek recognition of that judgment for several reasons, such as defending claims within England or relying on the findings of the foreign judgment in other proceedings (*res judicata*).

Enforcement follows recognition and is required for the execution of the award, i.e. compelling a party to pay the sum of money ordered by the foreign court.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

In order to recognise and enforce a judgment at common law, the party seeking enforcement (the claimant) must commence a new claim (by issuing a Claim Form) as one would for any other claim. The claimant must also file and serve "particulars of claim" on the judgment debtor, setting out the circumstances of the foreign judgment. Service may need to be effected outside the jurisdiction if the judgment debtor is not resident within the jurisdiction, which may require permission to serve the proceedings out of the jurisdiction (unless the court makes an order to dispense with service out of the jurisdiction in exceptional circumstances), further complicating and/or delaying the process. Once service is effected, the process is then usually expedited by the claimant applying for summary judgment (under CPR Part 24), on grounds that the judgment debtor has no real prospect of success as evidenced by the foreign judgment. The effect of applying for summary judgment is that the process of enforcing the foreign judgment is expedited and simplified.

Note, however, the issues highlighted below at question 2.7, point d) in relation to the enforcement of foreign judgments given in default and against defendants that have not expressly submitted to the jurisdiction of the foreign court, which may affect the amenability of the enforcement action to summary judgment.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Recognition and enforcement under the common law regime may be challenged by the defendant on the following grounds:

a) the foreign judgment is not final and conclusive. A final judgment is one that is final in the court in which the judgment was made and may not be re-adjudicated by the same court;
b) the foreign court did not have jurisdiction over the parties. A foreign judgment is only enforceable if the foreign court had jurisdiction according to English principles of private international law. It is not sufficient if the foreign court had jurisdiction according to its own legal rules;
c) the judgment is contrary to the public policy of England;
d) the foreign judgment offends the principles of natural justice or substantial justice enshrined in the English legal system; for example, if the defendant was not given due notice of the original proceedings (with the result that judgment was obtained in default) or was not given a fair opportunity to be heard;
e) the judgment was fraudulently obtained;
f) recognition of the foreign judgment would result in the contravention of the Human Rights Act 1998;
g) the dispute in question should be submitted to the determination of the courts of another country;
h) the judgment imposes a fine or a penalty upon the judgment debtor; and
i) there exists a previous final and conclusive judgment of a competent foreign or English court with sufficient jurisdiction that conflicts with the judgment that is being sought to be enforced.

These challenges can be made by the defendant in the proceedings issued for the recognition or enforcement of the judgment. These grounds can be relied upon in the evidence submitted by the judgment debtor resisting the claimant's summary judgment application under CPR Part 24 or employed as defences to recognition and enforcement.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

There are several specific regimes pertaining to enforcement of judgments on specific subject matters such as shipping, aviation, intellectual property, etc. These regimes are either incorporated into the national legal framework through the supra-national legislative authority of the EU (in the form of binding regulations enacted by the European Parliament or treaties to which the UK is a party), or are given effect through the enactment of national legislation. The Cross-Border Insolvency Regulations 2006 (SI 2006/1030), the Civil Aviation Act 1982, Carriage of Goods by Road Act 1965, Shipping Act 1995, etc. are such examples.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

Under common law, the defendant is entitled to challenge recognition and enforcement of a judgment on the basis that a previous conflicting English judgment exists which has been conclusive in deciding the issues between the parties. The principle of *res judicata* would apply here, pursuant to which the matter already decided would be resolved in favour of the previous English judgment, in the interest of judicial certainty.

If proceedings are ongoing in an English court between the parties at the time when one of the parties seeks recognition or enforcement of a foreign judgment on the same issue(s), the English court is likely to stay the English proceedings until the judgment creditor's claim for recognition and enforcement has been determined. The principle of *res judicata* is applied by the English court equally in cases where the issue has already been decided by a competent court in a foreign jurisdiction.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Generally, the basis for challenging enforcement under common law will not include an investigation of the merits of the claim/award being enforced. A foreign judgment may not therefore be challenged on the grounds that the foreign court was manifestly wrong on the merits of the case or misapplied the relevant law. However, if the foreign court's judgment conflicts with an

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existing English law or if the foreign judgment is irreconcilable with an English judgment on the same issues, then the court may refuse to recognise the foreign judgment on grounds that its recognition and enforcement would be contrary to public policy.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

A judgment of a foreign court purporting to apply English law would be treated the same as any other foreign judgment. A foreign judgment is not open to challenge on the ground that it misapplies English law.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

The United Kingdom does not constitute a legal union, as the laws of England and Wales differ from those of Scotland and Northern Ireland. Enforcement of foreign judgments in Scotland and Northern Ireland are subject to their domestic jurisdictional and procedural rules, which are not addressed here.

All Scottish and Northern Irish judgments, granting both monetary and non-monetary relief (including injunctive relief and declarations), are recognisable and enforceable in England and Wales under the Civil Jurisdiction and Judgments Act 1982. As such, there are no types of judgment excluded from recognition and enforcement if they have been granted by courts of Scotland and Northern Ireland, as long as they are final in the court that granted the judgment in question and there are no outstanding appeals.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

Pursuant to section 24(1) of the Limitation Act 1980, the limitation period to commence a claim to enforce a foreign judgment at common law is six years from the date of the foreign judgment sought to be recognised and enforced.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

All judgments for the payment of a sum of money obtained from the 'superior' courts of Commonwealth countries covered by the AJA can be registered in England if, in all the circumstances of the case, the English court in its discretion finds it just and convenient that the judgment should be enforced in England.

The FJA (like the common law regime) only covers final and conclusive judgments for payment of a sum of money (other than penalties and taxes).

Failure to serve proceedings on the defendant in order to enable it to defend the action is a ground on which recognition and enforcement of the foreign judgment may be refused under the AJA and FJA. However, a mere procedural irregularity in service will not render the foreign judgment unenforceable. The defendant would have to show that it was not made aware of the proceedings as opposed to being formally served in time in order to succeed on this defence.

In order for the foreign judgment to be registered, the AJA and FJA require that the foreign court should have had jurisdiction over the parties and the relevant issues in dispute according to English law principles. It is not sufficient that the foreign court had jurisdiction according to its own rules.

Under the AJA, the foreign judgment must be registered within one year from the date of the final judgment sought to be enforced, although the English court retains the discretion to accept registrations after the lapse of the stipulated period.

Under the FJA, foreign judgments must be registered within six years from the date of the final judgment sought to be enforced. If there have been appeal proceedings, time runs from the date of the last judgment.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

The AJA and FJA require foreign judgments to be registered in England before they can be enforced.

As stated above, under the AJA, the English court retains a discretionary power to register foreign judgments that it finds just and convenient to enforce.

Under the powers specified in the FJA, the court must register judgments that fulfil certain criteria, such as the judgment being for a specified sum of money and the court that granted the judgment having had jurisdiction over the parties and issues, in accordance with its own legal system and rules, as well as in accordance with English law principles.

Once a foreign judgment has been registered in England, that judgment, as from the date of registration, has the same force and effect as an English judgment and enforcement proceedings can be brought in respect of it as if it was a judgment originally obtained in England. The methods of enforcement described at question 4.1 below therefore become available to the judgment creditor upon registration.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

Under the AJA and FJA, the application for registration must be made at the High Court and may be made without notice to the judgment debtor. The judgment creditor must file an authenticated copy of the judgment of which recognition and enforcement is sought, an English translation (if necessary) of the judgment (which must be certified by a notary public) and a witness statement in support of the application in the form set out in CPR Part 74.4.

The application for registration and written witness evidence must specify the grounds for enforcement, the amount in respect of which the foreign judgment remains unsatisfied, and the amount of interest claimed. In the case of registration under the FJA, the written evidence must also specify that the judgment is a money judgment and confirm that it can be enforced by execution in the state of origin.

Where the application for enforcement is challenged on the grounds set out in question 3.4 below, the foreign court may be required to provide a declaration of enforceability upon the consideration of the merits of the opposition to the application. An application for the declaration of enforceability must be made under CPR Part 23 using Form N244.

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Once an order granting permission to register the foreign judgment has been granted by the English court, the order must be served on the judgment debtor by delivering it personally, by any of the methods of service permitted under the Companies Act 2006, or as directed by the court. Permission to serve the registration out of the jurisdiction is not required.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

The registration order which registers the judgment will specify the right of the judgment debtor to apply to have the registration set aside, the period within which such an application or appeal may be made and that no measures of enforcement will be taken before the end of that period, other than measures ordered by the court to preserve the property of the judgment debtor.

Under the AJA and FJA, upon receipt of a registration order, the judgment debtor can challenge the registration of the foreign judgment on the following grounds:

a) the court granting the judgment acted without jurisdiction. The foreign court must have jurisdiction according to English law principles;
b) the defendant was not served with proceedings in accordance with the rules of the foreign court and did not appear in the proceedings;
c) the judgment was obtained fraudulently;
d) the enforcement of the judgment would be contrary to public policy;
e) the judgment imposes a fine or a penalty on the defendant;
f) the judgment is not final and conclusive. The existence of a pending appeal can either defeat the enforcement action or, more likely, lead to a stay of the enforcement action pending determination of the appeal;
g) the judgment has been wholly enforced in the jurisdiction of the foreign court; and
h) there exists a previous final and conclusive judgment of a competent foreign or English court with sufficient jurisdiction that conflicts with the judgment that is being sought to be enforced.

The application to challenge registration must be made within the time specified in the registration order. The court may extend that period.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Once a judgment is recognised/registered, a judgment creditor has available to it the same methods and options to enforce that judgment or award against assets within England as it would if the original judgment had been made in England. Under the AJA and FJA, enforcement proceedings cannot commence until the registration order has been served on the judgment debtor and the specified time limit for the judgment debtor to challenge the registration has expired.

Potential methods of enforcement available to judgment creditors include but are not limited to:

a) Charging order – Such an order would confer upon the judgment creditor an interest over the property (land, goods, securities, etc.) of the judgment debtor within the jurisdiction.
b) Order for Sale – An order to sell the assets of the judgment debtor subject to a Charging Order.
c) Receivership order – This allows for the appointment of a court-appointed receiver who would help gather and ascertain the judgment debtor's assets in order to facilitate payment of judgment debts.
d) Third-party debt order – This allows the judgment creditor to collect on the debts owed to the judgment debtor. Note: this order cannot be made against future or foreign debts.
e) Writ of control or warrant of control – This allows the judgment creditor to take possession of the judgment debtor's goods to sell at auction or trade in satisfaction of the debt.
f) Attachment of earnings order – The judgment creditor may seek an order compelling an employer to deduct from an employee's salary (who is the judgment debtor) the sums necessary to pay the judgment creditor.

Pursuant to section 25 of the Civil Jurisdiction and Judgments Act 1982, the English court can also grant provisional/interim measures such as freezing injunctions in support of enforcement of foreign judgments pending enforcement proceedings in England. Such provisional measures are ordinarily granted only in circumstances where it would be expedient to do so and there is a sufficient jurisdictional link to England; for example, if the assets are located in England or the defendant resides in England.

Pursuant to CPR 74.9(1), if the defendant has made an application to set aside an order registering a foreign judgment, no steps can be taken to enforce the judgment until the application has been decided.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

The UK left the EU on 31 January 2020 on the terms of the Withdrawal Agreement.

Under the terms of the Withdrawal Agreement, the Brussels Recast Regulation continues to apply to legal proceedings commenced before the end of the transition period (which is currently scheduled to end on 31 December 2020). Pursuant to Article 67(1) of the Withdrawal Agreement, the Brussels Recast Regulation also applies to related proceedings that are commenced after the conclusion of the transition period; for example, those that arise from the same cause of action, or involve the same parties.

The UK government hopes to conclude a new civil jurisdiction and judgments regime with the EU before the end of the transition period. In the case of no agreement on civil jurisdiction and judgments being concluded by the end of the transition period, or indeed in the event of a no-deal Brexit, at that point, there would be no agreed EU framework for ongoing civil judicial cooperation between the UK and EU countries, as the Brussels Recast Regulation would no longer apply to the UK.

Similarly, the Lugano Convention and the Hague Convention on Choice of Court Agreements are to be applied by English courts until the end of the transition period. Thereafter, they will cease to apply, unless other arrangements are put in place.

The UK government has indicated that, to address these risks, the UK intends to accede to both the Lugano Convention and the Hague Convention on Choice of Court Agreements in its own right at the end of the transition period.

In relation to the Lugano Convention, Switzerland, Iceland and Norway have issued statements that they will support a request for accession from the UK. The UK will need to obtain the support of those countries and also the EU and Denmark to accede to the Lugano Convention.

In relation to the Hague Convention, the UK Government intends to deposit an instrument of accession before the end of the transition period. See Chapter 1 for further details about the relevance of this Convention in the context of Brexit.

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While the UK's departure from the EU will inevitably result in some changes to the framework for recognition and enforcement of judgments, we anticipate that the English courts will continue to recognise and apply clearly drafted jurisdiction clauses, and that judgments of the English courts will continue to be enforced in Member States (and *vice versa*), albeit perhaps with additional procedural steps to overcome.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

Owing to the variety of regimes discussed above, it is particularly important for clients seeking to enforce a foreign judgment in England to consider first which of the many regimes in England would apply, in order to determine the procedural route to be taken to achieve enforcement.

It is important to note that when determining whether the foreign court had competent jurisdiction, the English courts will make this determination according to the rules of English private international law. The fact that the foreign court had jurisdiction according to its own law is not determinative.

There is a particular risk in enforcing default judgments (i.e. a judgment in which the defendant has not appeared) because they inevitably raise the question of whether the foreign court had jurisdiction in the first place and whether the parties did, in fact, submit to the jurisdiction of that court. This is because, under English law, there is no concept of implied submission to jurisdiction *in personam*, which means that the defendant must have expressly submitted to the jurisdiction of the foreign court in order for a judgment *in personam* to be enforced by an English court.

English law recognises sovereign immunity as a valid defence to the enforcement of a foreign judgment against a State. This is because proceedings commenced in England by a judgment creditor for the purpose of enforcing a foreign judgment against a State do not qualify as "*proceedings relating to a commercial transaction for the purposes of s.3(1) of the State Immunity Act 1978*". The UK Supreme Court decision in *NML Capital Ltd v Republic of Argentina* ([2011] UKSC 31) confirmed that a State is able to raise sovereign immunity as a defence in respect of enforcement proceedings of foreign judgments and awards, even if the underlying proceedings relate to commercial transactions, unless the State has expressly waived sovereign immunity as a defence to enforcement (as it had on the facts of that case). In light of this interpretation of the State Immunity Act 1978, enforcing judgments against a State which has not expressly waived immunity in relation to enforcement proceedings is made particularly difficult, as there is little ammunition available to the judgment creditor seeking to defeat a sovereign immunity defence. Furthermore, even if a judgment creditor is able to enforce a judgment against the State, there are restrictions on the type of assets available for enforcement.

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Louise Freeman focuses on complex commercial disputes, and co-chairs the firm's Commercial Litigation and European Dispute Resolution Practice Groups.
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