Guide to Enforcement of Foreign Arbitral Awards and Court Judgments in England & Wales

Second Edition

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Practice Series
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I. INTRODUCTION

§ 1 Scope Note

This guide provides an overview of the recognition and enforcement of foreign arbitral awards (Part II) and foreign court judgments (Part III) in England & Wales. In other words, it concerns itself with the processes which the holder of a foreign award/judgment must follow for the award/judgment to be carried out against his opponent(s) in England. Execution itself (i.e. the civil processes with proprietary consequences which effect a transfer of value from judgment debtor, or those linked to him, to judgment creditor) is not dealt with specifically.

This guide provides the English accompaniment to Jenner & Block’s United States guide. Here, we discuss the law (as of 1 October 2018) governing the enforcement process, potential defences and pitfalls to enforcement and summarise the procedures that must be followed.

The guide has been updated to take account of developments since the last version went to press on 1 October 2017, in particular to reflect significant new court decisions (including the Court of Justice of the European Union’s controversial decision in Achmea on investor-state dispute settlement provisions) and to consider the future for the law and practice of enforcement if the UK leaves the European Union (“EU”), as it is currently set to do at 11pm on 29 March 2019. Broadly speaking, ‘Brexit’ is unlikely to significantly impact the enforcement of commercial arbitral awards, as opposed to court judgments, in England. But the principle in relation to UK-EU negotiations that “nothing is agreed until everything is agreed” has created substantial uncertainty which is yet to be resolved.

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1 For further resources see Appendix J.
2 ‘Recognition’ is to be distinguished from ‘recognition and enforcement’. This guide focuses on the latter. For further detail on the distinction, see (fn 6).
3 That is, it focuses on the law of England & Wales as applied in the English High Court. Subsequent references to ‘England’ should be taken to include ‘England & Wales’.
4 For further reference, see Civil Procedure Rules (“CPR”) Part 70 and Practice Direction 70.
5 A principle articulated by the EU and summarised by the former Secretary of State for Exiting the European Union, Mr David Davis MP.
II. ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

§ 2 Overview

The recognition and enforcement of foreign arbitral awards is governed principally by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), which is considered at A below. The two other regimes for enforcement of foreign awards (one statutory, the other common law based) as well as the enforcement of ‘domestic’ (i.e. London-seated) awards – the latter technically outside the scope of this guide but of significant practical importance and therefore worthy of brief mention – are considered at B. Enforcing investment arbitration awards, and the particular challenges of enforcing them against states, are considered at C. An outline of procedure and a discussion of certain procedural issues is found at D. Finally, issues concerning the enforcement of foreign preliminary/interim measures are discussed at E. That the English Court is pro-arbitration and pro-enforcement of international arbitration awards will be much in evidence.

6 Although ‘recognition’ and ‘enforcement’ are often used interchangeably and/or described as if they are inextricably linked, this is inaccurate. Recognition, which requires the recognising court to accept the validity and binding nature of an award in respect of the issues which it deals with, is distinct from enforcement, which goes a step further, allowing the award to be carried out in the enforcing jurisdiction. That said, if an award is to be enforced it must necessarily be recognised by the enforcing court. Thus, the precise distinction is between ‘recognition’ and ‘recognition and enforcement’: see N. Blackaby, C. Partasides, et al., Redfern and Hunter on International Arbitration (6th edn, OUP 2015), §11.19. This guide deals with ‘recognition and enforcement’ – subsequent references to ‘enforcement’ are to be construed accordingly. Seeking the recognition of a foreign award solely for defensive purposes by the creation of something akin to a res judicata (see, for example s. 101 of the Arbitration Act 1996 in respect of the New York Convention awards where recognition allows a person to rely on an award as a “defence, set-off or otherwise in any legal proceedings in England and Wales…”) will not be separately addressed in the guide.

7 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38 (Appendix B). The Convention on the Execution of Foreign Arbitration Awards signed at Geneva on 26 September 1927 (the Geneva Convention), which requires ‘double exequatur’ and which now has limited application, is relevant only to enforcement of awards rendered in those few countries which have not also ratified the New York Convention. These include a number of off-shore jurisdictions. Different pre-conditions to enforcement apply. It will not be considered further in this guide.

8 A New York Convention Award creditor is entitled to avail himself of these residual enforcement regimes if he should so wish: s. 104 of the Arbitration Act 1996 (Appendix A).
A. THE NEW YORK CONVENTION

§ 3 Introduction

The United Kingdom acceded to the New York Convention in 1975. It invoked the “reciprocity” reservation, according to which the Convention applies only to awards made in states that are also parties to the Convention. Given that the number of state parties has grown to more than 150, the significance of the reciprocity reservation continues to diminish. The United Kingdom has extended the territorial application of the New York Convention to the British Virgin Islands, Gibraltar, the Isle of Man, Bermuda, the Cayman Islands, the Bailiwick of Guernsey, and the Bailiwick of Jersey (where the reciprocity reservation also applies).

The New York Convention is now given effect to by ss. 100-104 of the Arbitration Act 1996 (“1996 Act”). s. 100 of the 1996 Act defines a “New York Convention award” as an “award made, in pursuance of an arbitration agreement, in the territory of a State (other than the United Kingdom) which is a party to the New York Convention.” An “arbitration agreement” means an arbitration agreement in writing; it is deemed to be made at the seat of the arbitration. The English Court will have regard to the New York Convention’s aims and object, the travaux preparatoires, decisions on it by foreign courts and views on it by foreign jurists in order to give effect to it.

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9 For a useful resource of cases from multiple jurisdictions, see generally: http://newyorkconvention1958.org/.
11 New York Convention (fn 7), Article I(3); cf. the position in the United States where both the reciprocity and commercial reservations are invoked.
12 ibid.
13 (fn 7). In 2018, Cabo Verde and (North) Sudan acceded to the Convention.
14 ibid, Notes: Declarations or other notifications pursuant to Article I(3) and Article X(1), point (g).
15 ss. 100-104 of the Arbitration Act 1996 (c. 23). Previously it was given effect by the Arbitration Act 1975.
16 sub-s. 100(2)(a)-(b) of the 1996 Act.
§ 4 Enforcement under s. 101

A New York Convention award can be enforced under s. 101 of the 1996 Act. There are two principal methods of doing so: the award may, by leave of the English Court, be enforced in the same manner as a judgment of the court to the same effect (sub-s. 101(2)); and judgment may then (if the claimant requests it) be entered in terms of the award (sub-s. 101(3)). If the latter course is taken, the award merges with the judgment. The route taken can have important consequences. For example, failure to comply with an award which has been merged into a judgment can attract the sanction of contempt of court.17 But it can also make enforcing the award in other jurisdictions more difficult.18 It is permissible to enforce part of a New York Convention award provided the part to be enforced can be ascertained from the face of the award and judgment can be given in the same terms as those in the award.19 The grounds on which enforcement will be refused are limited and are exhaustively set out in s. 103 of the 1996 Act.20

§ 5 Challenges to Enforcement

The English Court may21 refuse to enforce a New York Convention award on the grounds set out in s. 103 of the 1996 Act which reflects Article V of the New York Convention.22

18 Some jurisdictions take the view that where an award has been merged with a judgment, the creditor can no longer take advantage of arbitration conventions. If enforcement is likely to be sought in other jurisdictions, local counsel’s advice should therefore be sought.
20 Honeywell International Middle East Ltd v Meydan Group LLC (formerly known as Meydan LLC) [2014] EWHC 1344 (TCC).
21 Not 'must': discussed further below.
22 s. 103 of the 1996 Act (Refusal of recognition or enforcement):
(2): "Recognition or enforcement of the award may be refused if the person against whom it is invoked proves—
(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;
(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
(d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4));
(e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;"
A mistake of fact or law by the arbitrator is not one of the available grounds. The grounds are construed narrowly and ought not to lead to a re-examination of the underlying merits.\textsuperscript{23} There is said to be a “pro-enforcement bias”.\textsuperscript{24} The party challenging an award bears the burden of raising and proving (on a balance of probabilities) any one of the six grounds of challenge in sub-s. 103(2) of the 1996 Act.\textsuperscript{25} The twin grounds of challenge found in sub-s. 103(3) – issues of arbitrability (i.e. whether an issue is capable of settlement by arbitration) and public policy – may be considered by the court of its own motion.

Two overarching points are made here. First, a party resisting enforcement does not have to show that the award has been successfully challenged in the supervisory court of the seat,\textsuperscript{26} nor is it judicially relevant that the arbitrators have ruled on their substantive jurisdiction (although regard will be had by the court to a tribunal’s reasoning). The (non)existence of substantive jurisdiction is examined afresh.\textsuperscript{27} Secondly, the English Court’s discretion to refuse to enforce an award is limited (there is no discretion at large)\textsuperscript{28} and will be affected by the ground relied upon to resist enforcement.\textsuperscript{29} Although there are different articulations of the principle, the question appears to be whether some recognisable legal principle affects the prima facie right to have the award set aside.\textsuperscript{30}

\textsuperscript{23} Lesotho Highlands Development Authority v Impregilo SpA & Ors [2005] UKHL 43, [2006] 1 AC 221 [30].
\textsuperscript{25} Rosseel NV v Oriental Commercial Shipping Ltd [1991] 2 Lloyd’s Rep 625; Dardana Ltd (ibid) [17]-[18].
\textsuperscript{26} But see (fn 62).
\textsuperscript{28} ibid [67]-[69]; see also Dardana Ltd (fn 24) [8], [18]; A. J. van den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation (1981), p. 265.
\textsuperscript{29} Dallah (fn 27) [68].
\textsuperscript{30} ibid [127]. On that basis, China Agribusiness Development Corp v Balli Trading [1998] 2 Lloyd’s Rep 76 might be thought to be towards the limit of the Court’s discretion. In that case, the High Court upheld the enforcement of a New York Convention award where there was no legal preclusion but minimal prejudice to the party resisting enforcement (conduct of arbitration under ‘current’ rather than ‘provisional’ rules of trade commission).
§ 6  Natural Justice/Due Process and Public Policy Defences

Two of the grounds for challenge require particular comment on account of their systemic importance and enduring popularity with parties.31

First, sub-s. 103(2)(c) of the 1996 Act32 allows the court to refuse enforcement if a party did not receive proper notice of appointment of the arbitrator or was otherwise unable to present his case. Instances of it grounding a successful basis for challenge are few and far between.33

In relation to proper notice, the test is one of substance not form: a challenge will not succeed in circumstances where despite a technical failure a party did learn of the appointment of the arbitrator or of the arbitration proceedings.34 Proper notice has been taken to mean “notice likely to bring the relevant information to the attention of the person notified”, taking account of the parties’ contractual dispute resolution mechanism.35

In Minmetals Germany GmbH v Ferco Steel Ltd, inability to present one’s case (as opposed to a party’s failure to take the opportunity to do so) was stated to impinge upon “the requirements of natural justice reflected in the audi alteram partem rule [the right to be heard]”.36 Natural justice is assessed from the perspective of English public policy.37 A general challenge to procedural orders made within the bounds of a tribunal’s discretion is unlikely to succeed. In addition, where breach of due process is established in principle but was immaterial in practice, the court may exercise its discretion to enforce the award.38 But in Kanoria v Guinness, where the party challenging the award did not have notice of an allegation

32 See New York Convention, Article V(1)(b).
34 Honeywell International Middle East Ltd v Meydan Group LLC (formerly known as Meydan LLC) [2014] EWHC 1344 (TCC) [126].
35 Oao v Magneco Metrel UK Ltd [2017] EWHC 2208 (Comm).
37 Cukurova Holding AS v Sonera Holding BV [2014] UKPC 15 [32].
38 See § 5 above.
of fraud which was the basis on which the arbitrator made an award against him, and no opportunity to present its case in relation to it, this was a clear breach of natural justice. The challenge was upheld.\(^{39}\)

Secondly, sub-s. 103(3) of the 1996 Act allows the court to refuse to enforce an award which offends against public policy.\(^{40}\) This is a fact-sensitive inquiry. We have it on good authority that considerations of public policy can never be exhaustively defined, but they should be approached with extreme caution.\(^{41}\)

Six points are made in this regard.

First, public policy is assessed from the perspective of English law in maintaining the fair and orderly administration of justice\(^{42}\) but parochial concerns ought not to be taken into account. For example, the fact that English law would arrive at a different result is insufficient.\(^{43}\) In *Westacre Investments*, the Court of Appeal noted, referring to *Lemenda Trading Co Ltd v African Middle East Petroleum Co Ltd*,\(^ {44}\) that it was difficult to see why acts outside the field of universally condemned activities (such as terrorism), or anything short of corruption or fraud in international commerce, should invite the attention of English public policy where a contract was not performed within the jurisdiction of the English Court.\(^ {45}\) The court in *Westacre* also agreed with previous authorities that permitting a party to pursue an allegation that a New York Convention award had been obtained by fraud would normally require two conditions to be fulfilled: (i) that the evidence to establish the fraud was not available to the party alleging it at the time of the hearing before the arbitrators and (ii) where perjury is the fraud alleged, the

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\(^{40}\) New York Convention, Article V(2)(b).


\(^{43}\) *OTV SA v Hilmarton Ltd* [1999] 2 Lloyd’s Rep 222, 224.

\(^{44}\) [1988] 1 Lloyd’s Rep 361.

\(^{45}\) *Westacre Investments Inc v Jugoimport-SDPR Holding Co. Ltd. & Ors* [1999] 1 All ER (Comm) 865, [2000] QB 288, 304-5. In that case, a consultancy agreement in relation to the sale of military equipment in Kuwait had been upheld by the tribunal as a matter of its proper law and curial law.
evidence must be so strong that it would reasonably be expected to be decisive at a hearing and if unanswered must have that result.\textsuperscript{46}

\textbf{Secondly}, English public policy favours the enforcement of arbitral awards.

\textbf{Thirdly}, English public policy presently includes European Community public policy. Breaches of competition obligations under the Treaty on the Functioning of the European Union ("TFEU")\textsuperscript{47} and of EC consumer protection legislation\textsuperscript{48} arising out of the underlying contract can give rise to a public policy defence.

\textbf{Fourthly}, evidence of fraud or illegality on the part of the claimant may not suffice to render enforcement contrary to public policy. In \textit{Sinocore International Co Ltd v RBRG Trading (UK) Ltd}, the High Court and then the Court of Appeal upheld a foreign arbitration award, based on breach of a sale contract, in favour of a seller who had submitted forged bills of lading under a letter of credit.\textsuperscript{49} The tribunal had found that the buyer’s breach of the sale contract caused the seller’s loss, and this had occurred before the seller’s forgery. At first instance and on appeal, it was held that since the tribunal had had jurisdiction to determine which party breached the sale contract and the losses caused by that breach, it was not for the court to go behind the tribunal’s finding that the breach caused the loss regardless of the forgery. The public interest in the finality of arbitration awards, particularly an international award determined as a matter of foreign law, clearly and distinctly outweighed any broad objection on the grounds that the transaction was “tainted“ by fraud.\textsuperscript{50} In this case, the fraudulent conduct was essentially collateral. In enforcing the award the English Court was not allowing its “process to be used by a dishonest person to carry out a fraud“ and enforcement of the award
was held not to be contrary to public policy.\textsuperscript{51} Alternatively, even if public policy were engaged, such considerations were clearly outweighed by the interests of finality.\textsuperscript{52}

\textbf{Fifthly}, a foreign court’s decision in respect of public policy under the New York Convention may not give rise to an issue estoppel before the English Court if it can be shown that its conception of public policy differs from the English Court’s conception.\textsuperscript{53}

\textbf{Finally}, an award debtor’s fraud allegations against the award creditor may have no life of their own outside of the recognition/enforcement context. In 2018, the High Court and then the Court of Appeal considered the unusual situation of a defendant which wished the enforcement proceedings started in England against it to continue after they had been dropped by the claimants.\textsuperscript{54} After receiving a $500 million award from a Swedish-seated tribunal against Kazakhstan, the claimants brought enforcement proceedings in a number of jurisdictions, including England. Before the English Court, Kazakhstan alleged that the claimants had obtained the award by fraud and the Court gave directions for a trial. But days before disclosure was due, the claimants served a notice discontinuing the English proceedings. When Kazakhstan applied to have that notice set aside, the judge at first instance determined that the fraud issue should go to trial, notwithstanding that Kazakhstan’s fraud defence was not a freestanding claim and the claimants wished to discontinue their enforcement claim in England. He concluded “\textit{If this is an exceptional conclusion, this is an exceptional case.}”\textsuperscript{55}

The Court of Appeal, however, held that Kazakhstan had no legitimate interest in its fraud case continuing to a hearing in England where there was no prospect of enforcement in

\begin{itemize}
\item \textsuperscript{51} [2018] EWCA Civ 838 [37].
\item \textsuperscript{52} [2018] EWCA Civ 838 [40].
\item \textsuperscript{53} Yukos Capital Sarl v OJSC Rosneft Oil Co (No 2) [2012] EWCA Civ 855, [2014] QB 458 [150]-[157] – where the Court of Appeal considered that Dutch public policy was “\textit{inevitably}” different to English public policy ([151]). With respect, this may be putting it too high: in principle, two jurisdictions’ public policies in respect of a single issue might be in alignment. cf. Hamblen J at first instance ([2011] EWHC 1461 (Comm), [2012] 1 All ER (Comm) 479) [93]; see also Diag Human SE v Czech Republic [2014] EWHC 1639 (Comm), [2014] 2 Lloyd’s Rep 283 [58]-[63] (in the context of whether a decision by the Austrian Supreme Court that an award was not binding could amount to an issue estoppel).
\item \textsuperscript{54} Stati v Kazakhstan [2018] EWHC 1130 (Comm), [2018] 1 WLR 3225; [2018] EWCA Civ 1896.
\item \textsuperscript{55} Stati v Kazakhstan [2018] EWHC 1130 (Comm), [2018] 1 WLR 3225 [60].
\end{itemize}
this jurisdiction. The Court of Appeal did not, however, rule out “the possibility of exceptional circumstances justifying the continuation of proceedings” where “a finding of fraud by the English court would create an issue estoppel in countries where enforcement proceedings were pending”. But this was not such a case and “[t]here is in general a disinclination on the part of the [English] courts to give what amount to advisory rulings on issues for the benefit of foreign courts”. The claimants were therefore permitted to discontinue their enforcement proceedings, on condition that they would never again in any circumstance attempt to enforce the award in England.

§ 7 Enforcement of Awards Set Aside or Not Yet Binding

This continues to be a controversial topic. Two situations are considered here.56

The first situation we consider is where the court of the seat57 has set aside or annulled an award. This is a ground of challenge under sub-s. 103(2)(f) of the 1996 Act. There is no absolute bar on enforcement of an award set aside by the court of the seat: as discussed above, the English Court possesses a limited discretion which may be deployed in circumstances where the basis for annulment is being challenged before the English Court. This was confirmed in Yukos Capital v Oil Company Rosneft, where Yukos sought, by way of common law action on awards previously set aside by the Moscow Arbitrazh Court, to claim interest on the sums awarded. Rosneft’s argument that an award set aside at the seat could never be enforced elsewhere – ex nihilo nihil fit as some might say59 – was rejected by the English Court.60 But the threshold for refusing to recognise a supervisory court’s decision to

56 Stati v Kazakhstan [2018] EWCA Civ 1896 [54]-[56].
57 See sub-s. 103(2)(f) of the 1996 Act and New York Convention, Article V(1)(e). This multi-faceted provision has given rise to considerable uncertainty. For present purposes, we focus on the wording which provides that an award may be refused enforcement if it has “not yet become binding […] or has been set aside […] by a competent authority of the country in which, or under the law of which, it was made”. Or, exceptionally, where the arbitration has been conducted in State A under the law of State B, the courts of State B. ‘The law of State B’ means the lex arbitri rather than the substantive/proper law governing the contract out of which the dispute arose (nor the law governing the arbitration agreement).
59 Or ‘nothing comes of nothing’ as others might say. The principle has no material English judicial support.
set aside an award is high: in Maksimov v OJSC ‘Novolipetsky Metallurgichesky Kombinat’, the English Court held that the test is whether the decision was so extreme and incorrect as not to be open to a court acting in good faith. Cogent evidence must be provided. The prevailing view is that the courts of the seat are best-placed to decide on the setting aside of an award and their view should therefore, in general, be respected.

Turning back to Yukos, separately Yukos argued that Rosneft was estopped from relying on the Moscow Court’s decision by virtue of a subsequent decision of the Dutch Court of Appeal that the annulment decision in Russia should not be recognised because it was obtained by state interference. This argument was rejected by the Court of Appeal on the basis that the issues before the English and Dutch courts were distinct since whether the annulment decisions were ‘partial and dependent’ had been decided under Dutch public policy but for the English Court to refuse recognition, evidence of partiality and dependency would have to be adduced and considered from the perspective of English public policy. And in any event, it was not a proper case for an estoppel since non-recognition of a foreign court’s judgments raised issues of comity.

The second situation is where a court other than the court of the seat has declared that an award is not yet binding. Again, the ground of challenge is under sub-s. 103(2)(f) of the 1996 Act. Where there has been a full contested hearing on the merits before another enforcing court as to whether the award is binding, a decision that it is not may create an issue estoppel blocking enforcement proceedings in England.

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61 [2017] EWHC 1911 (Comm).
62 Albeit that this view is not without challenge. In France, for example, the international character of the award is stressed. See further N. Blackaby, C. Partasides, et al., Redfern and Hunter on International Arbitration (6th edn, OUP, 2015), chapter 11.
64 See also (In 53).
65 Diag Human SE v Czech Republic [2014] EWHC 1639 (Comm), [2014] 2 Lloyd’s Rep 283. But special caution is required before a foreign judgment can be held to give rise to an issue estoppel (see Diag [54] and judgments cited therein).
B. OTHER ROUTES TO ENFORCEMENT

§ 8 Enforcement of a Foreign Award as an English Court Judgment

A successful arbitral party may apply to the English Court, under s. 66 of the 1996 Act, in order to enforce a foreign arbitral award “in the same manner as a judgment or order of the court to the same effect” (sub-s. 66(1) of the 1996 Act). If permission is given, a claimant may also apply for the “judgment [to] be entered in terms of the award” (sub-s. 66(2) of the 1996 Act). s. 66 applies to all arbitrations, whether or not seated in England, and even if no seat has been designated. This route to enforcement is therefore also open for New York Convention awards. In practice, however, enforcement under ss. 100-103, as discussed above, is the more usual choice: sub-s. 101(2) and sub-s. 101(3) mirror the language of sub-s. 66(1) and sub-s. 66(2).

Sub-s. 66(1) and sub-s. 66(2) are distinct: the first allows a successful party to use the English Court’s enforcement mechanisms in order to enforce the award as if it were an English judgment (‘enforced in the same manner as a judgment of the court to the same effect’); the second allows the party to obtain an English judgment in terms of the award.

However, an application under s. 66 “does not involve an administrative rubber stamping exercise.” Permission to enforce in this way is within the discretion of the court: although “[t]here is a strong presumption in favour of enforcing any arbitration award”, the successful arbitral party must be able to show that the permission(s) will bring additional benefit above that which the applicant already enjoys by virtue of the award in itself. In other words, would the realisation of the benefit of the award be assisted by enforcement? The answer

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66 Provided the award was issued pursuant to an arbitration agreement “in writing”. The 1996 Act applies only to arbitration agreements “in writing”, although this covers arbitration agreements made by exchange of written communications or merely evidenced in writing (s. 5). For awards pursuant to unwritten arbitration agreements, the only option for enforcement may be commencing a claim under the common law (see § 10 below).

67 sub-s. 2(2)(b) of the 1996 Act.

68 See the discussion at § 4 above for the practical consequences of taking one route or the other.

69 West Tankers Inc v Allianz SpA (The Front Comor) [2012] EWCA Civ 27, [2012] 2 All ER (Comm) 113 [38].

70 Sharma v Farlam Ltd [2009] EWHC 1622 (Ch) [429].
may turn on whether there are assets within the jurisdiction or an English judgment would forestall the enforcement of a subsequent conflicting judgment from another EU Member State.

When considering whether to grant leave to enforce under s. 66, the court may also consider grounds for refusing enforcement broadly similar to those under the New York Convention discussed above. The court will refuse leave to enforce if the defendant can show that the tribunal lacked substantive jurisdiction to make the award. The defendant’s right to object may, however, be lost if it continued to take part in the arbitration without raising the jurisdictional objection at the time.71

Finally, it should be noted that in circumstances where a foreign judgment has been entered on a non-New York Convention award, it may be that the foreign judgment, rather than the foreign award, is enforceable in England (as to which, see Part III below).72 But a foreign judgment which merely holds that an award meets the relevant criteria for enforceability and gives leave to enforce it is not a judgment capable of enforcement in England.73

§ 9 Enforcement of Commonwealth Awards

It is possible, albeit uncommon, to enforce arbitral awards made in certain specified (mainly present and former Commonwealth) countries under the Administration of Justice Act 1920 (“1920 Act”) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (“1933 Act”).74 If the award has become enforceable in the same manner as a judgment in the foreign jurisdiction, it may be registered as a judgment in the English High Court.75 This condition requires that the foreign jurisdiction has given permission to enforce the award in equivalent terms to those of s. 66 of the 1996 Act. Once the award is registered as a judgment, it is of

71 s. 73 does not have an equivalent in s. 103. See (fn 27).
72 See further s. 34 of the Civil Jurisdiction and Judgments Act 1982 (Appendix I); Dicey, Morris & Collins on the Conflict of Laws, (15th edn, Sweet & Maxwell, 2012) with supplement (2014) (“Dicey, Morris & Collins”), §16-110.
73 Dicey, Morris & Collins, §16-163.
74 For a list of the relevant countries, see (fn 210) and (fn 212) below. See also Appendices F and G for selected provisions from the Acts.
75 ss. 9 and 12 of the 1920 Act; ss. 2 and 10A of the 1933 Act.
the same force and effect, and can be enforced, as if it were a judgment of the English High Court.

§ 10 Enforcement under the Common Law

An arbitration award may also be enforced under the common law by bringing an “action on the award”.\(^{76}\) Such a claim is a new independent claim, and is essentially contractual. The dominant view is that a claim on the award is a claim for damages for breach of an implied obligation to fulfil any resulting arbitral award. Hence, a claimant will have to prove that the defendant submitted to arbitration by an agreement valid according to its governing law, thereby agreeing to the implied term which was breached by failure to honour the award. He will also need to show that the award is valid and final according to the law governing the arbitration proceedings.

In principle, enforcing an award by bringing a common law action on the award is available for all types of arbitral award – whether foreign or domestic, New York Convention or not – and so permits enforcement of awards made in any jurisdiction. In practice, however, the additional challenges, costs and delay of bringing an essentially contractual claim mean that it is a route of last resort. For instance, for non-New York Convention awards, enforcement under s. 66 of the 1996 Act, as described above, represents a simpler alternative route to bringing an action on the award. However, the common law route may be the only available route if the court’s permission under s. 66 is refused (although issues of estoppel may arise) or if the arbitration agreement is not in writing.\(^{77}\)

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\(^{77}\) s. 5 of the 1996 Act requires an arbitration agreement to be “in writing”, although this includes if the agreement is made by exchange of written communications or if the agreement is merely evidenced in writing.
§ 11 Enforcement of Domestic (English-seated) Awards

Given the enduring popularity of London as an arbitral seat, it would be remiss not to make brief specific mention of the enforcement of an English ‘domestic’ award (i.e. one where the seat is London; the parties themselves may well be domiciled outside England).\(^78\)

Domestic awards are typically enforced under s. 66 of the 1996 Act. As already explained, enforcement under s. 66 is possible only with permission of the court. However, the English Court is pro-enforcement as a matter of policy. s. 66 sets out only one mandatory ground where leave to enforce must be refused: lack of substantive jurisdiction of the tribunal (sub-s. 66(3) and s. 67). The burden of proving this lies upon the award debtor. The award debtor may also challenge the award on the ground of a serious irregularity (s. 68) but success on this ground – in respect of which there is a high threshold (the serious irregularity must be such that it has caused or will cause a substantial injustice\(^79\)) – is rare. s. 68 contains an exhaustive list of 9 irregularities, which include that the tribunal has failed to comply with its duty, exceeded its powers or failed to deal with issues put to it. Finally, unless otherwise agreed,\(^80\) a party may (seek leave to) appeal to the English Court on a question of law arising out of an award.\(^81\) This ground is available to a party where English law governs the arbitration agreement. This ground does not extend to factual findings/procedural errors.

Applicants must comply with procedural formalities.\(^82\) The right to raise these objections may be lost if the party delays: they must be brought within 28 days of the award or the end of any available arbitral process of appeal or review;\(^83\) and if a party continues to take part in

\(^78\) To illustrate, 94% of arbitrations commenced under the London Court of International Arbitration (LCIA) Rules in 2017 were seated in London (and so would result in a domestic award from an English perspective), but more than 80% of the parties were from outside the United Kingdom (‘Facts and Figures – 2017 Casework Report’, LCIA, published April 2018, pp. 6 and 10).


\(^80\) s. 69 (Appeal on point of law) is not a mandatory provision of Part I of the 1996 Act (unlike ss.66-68). Accordingly, parties are free to (and commonly do) agree to exclude the application of this provision to their arbitration agreement.

\(^81\) i.e. an appeal can be made either with the agreement of all the parties to the proceedings or with the leave of the Court: s. 69(2)-(3) of the 1996 Act.

\(^82\) s. 70 of the 1996 Act.

\(^83\) sub-s. 70(3) of the 1996 Act.
arbitral proceedings without promptly making certain objections, it may not raise those objections later.\textsuperscript{84} Hence, generally, a party resisting enforcement is unlikely to be successful if the alleged grounds of challenge were known about for some time but were raised only for the first time at the enforcement stage.

\textbf{§ 12 The Impact of ‘Brexit’ on UK Arbitration}

‘Brexit’ should not impact the enforcement of EU-seated commercial arbitral awards in the UK or of English-seated commercial awards in the EU.\textsuperscript{85} Each EU Member State is a party to the New York Convention and the New York Convention constitutes the instrument by which arbitral awards are enforced between EU Member States. Unlike the enforcement of judgments between EU Member States,\textsuperscript{86} the present regime is not a creature of EU law. Hence, if the UK leaves the EU, it will not thereby cease to be a Contracting State under the New York Convention and the regime set out above will continue to apply.

London remains a leading, arguably the leading, seat of arbitration. Research by Queen Mary University of London ("QMUL") suggests that London is the most preferred seat of arbitration (followed by Paris, Singapore, Hong Kong, Geneva, New York and Stockholm).\textsuperscript{87} To date, London’s popularity as a seat has not obviously fallen in the two years since the ‘Brexit’ referendum. Indeed, QMUL’s International Arbitration Survey in 2018 concluded that London may have lengthened its lead on Paris since the previous survey in 2015.\textsuperscript{88} Asked for their view on the impact of ‘Brexit’, 55% of respondents thought that it was unlikely to bring about any change as far as the choice of London as an arbitral seat is concerned. Disagreeing,

\textsuperscript{84} s. 73 of the 1996 Act.
\textsuperscript{85} Albeit with some nuance. For instance English public policy will change if/when it no longer incorporates EU competition and consumer protection law and ‘Brexit’ may have implications within the context of investor-state dispute settlement (ISDS) (see § 16 below).
\textsuperscript{86} As to which see, § 21 below.
37% thought London’s popularity as a seat of choice would suffer to some degree, great or small, whilst 9% considered London arbitration would instead experience a positive impact.89

C. ENFORCEMENT OF INVESTMENT ARBITRATION AWARDS

§ 13 Enforcement of ICSID Awards

Different rules apply to investor-state arbitrations conducted under the rules of the World Bank’s International Centre for Settlement of Investment Disputes (“ICSID”). The UK is one of the 154 Contracting States party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”).

England’s 1996 Act does not generally apply to ICSID arbitrations. Instead, the ICSID Convention provides for certain limited grounds pursuant to which a party may seek to revise or challenge an award using internal ICSID procedures.

In this way, national courts of the signatory states are left to deal only with recognition and pecuniary enforcement of the award: “Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.”

Hence, an ICSID award may be registered in the English High Court, whereupon the award’s pecuniary obligations have the same force and effect as if in a judgment of the High Court. This route to enforcement lies outside the normal English regimes set out above, including the New York Convention regime. The New York Convention grounds to resist enforcement do not apply to an ICSID award before the English Court. Unless an ICSID award is annulled pursuant to the internal ICSID procedure, the English Court is bound to recognise it.

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90 For a list of the Contracting States, see <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx>.
91 s. 3 of the Arbitration (International Investment Disputes) Act 1966: see in particular s. 3(2) which does preserve the application of s. 9 of the 1996 Act.
92 See § 14 below.
93 ICSID Convention, Article 54(1).
94 Here, the Arbitration (International Investment Disputes) Act 1966 applies (s. 2), not the 1996 Act.
However, despite the limited role of national courts in recognising and enforcing an ICSID award, national law remains relevant. For example, in *Micula v Romania*, the English Court registered an ICSID award, but stayed further enforcement, pending determination by the Court of Justice of the European Union ("CJEU") whether execution of the award might amount to unlawful state aid under the TFEU.\(^95\) The stay on enforcement was held not to conflict with the UK’s ICSID obligations because a purely domestic court judgment would have been subject to the same restriction. In 2018, the Court of Appeal upheld the stay of enforcement of the Micula brothers’ ICSID award. The three Lord Justices who heard the appeal arrived at the same result through differing reasoning – a testament to the difficulty of balancing obligations under the ICSID Convention and under EU law.\(^96\) The Court of Appeal concluded that the UK has an international obligation under the ICSID Convention, transposed into domestic law by the Arbitration (International Investment Disputes) Act 1966 ("1966 Act"), to enforce the ICSID award, subject only to the limited discretion to control the process of execution conferred by sub-s. 2(1)(c) of the 1966 Act. The court’s interpretation of sub-s. 2(1)(c) was that its control over the process of execution extends to exercising the court’s procedural powers to grant a (temporary) stay of execution if in the particular circumstances of the case it is just to do so. The so-called Kapferer principle\(^97\) (that EU law does not require a national court to reopen a final judicial decision even if failure to do so would make it impossible to remedy an infringement of a provision of EU law) did not apply in this case; it yields to the need for effective application of EU State aid law.

In addition, the ICSID Convention does not affect national laws on state immunity from execution.\(^98\) So, the question of which property an ICSID award may be enforced against will be answered with reference to English law on immunity from execution, as discussed below.

\(^95\) *Micula & Ors v Romania* [2017] EWHC 31 (Comm), [2017] 3 CMLR 6.
\(^96\) *Micula & Ors v Romania* [2018] EWCA Civ 1801.
\(^98\) ICSID Convention, Article 55.
§ 14 Revision and Annulment under the ICSID Convention\textsuperscript{99}

(i) Revision

The ICSID Convention provides that a party may request revision of an award on the ground of discovery of some fact, which would decisively affect the award – provided that the fact was unknown to both the tribunal and to the applicant at the time of award being rendered, and the applicant’s ignorance was not due to negligence.\textsuperscript{100} Revision is an extraordinary remedy;\textsuperscript{101} accordingly, the threshold for a new fact that could be seen to decisively affect the award is high.\textsuperscript{102} In practice, revision applications are rarely made.\textsuperscript{103}

The application must be made in writing to the Secretary-General within 90 days after the discovery of the fact on which revision is requested, and in any event within three years after the date on which the award was rendered.\textsuperscript{104} The request will be submitted, if possible, to the tribunal that rendered the award. If not, a new tribunal will be constituted for the purpose of reviewing the request. A tribunal may stay enforcement of the award pending its decision on revision. The outcome of a revision process is either the confirmation of the award, or a change of the points of the award.\textsuperscript{105}

(ii) Annulment

Like revision, annulment is an exceptional recourse. It is not a remedy against an incorrect decision.\textsuperscript{106} A party may request a full or partial annulment based on one or more of

\begin{footnotesize}
\textsuperscript{99} Other post-award remedies are provided for in the Convention: supplementary decisions (Article 49(2) of the ICSID Convention) and interpretation (Article 50). They are not discussed here.

\textsuperscript{100} ICSID Convention, Article 51.

\textsuperscript{101} In Venezuela Holdings, BV, et al v Bolivarian Republic of Venezuela, ICSID Case No. ARB/07/27, the tribunal commented that "the concept of revision adversely affects the principle of res judicata" and that the concept "must remain exceptional".

\textsuperscript{102} In Bolivarian Republic of Venezuela v Tidewater Investment SRL and another, ICSID Case No. ARB/10/5, the tribunal held that a clerical error is not a new fact for the purposes of revision under Article 51(1).

\textsuperscript{103} According to the World Bank’s International Centre for Settlement of Investment Disputes website, a total of eight revision applications have been initiated until October 2018, which have led to three issued decisions on revision (the other five cases have been discontinued). In all three issued decisions, the tribunal rejected the application. See <https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx> (accessed on 1 October 2018).

\textsuperscript{104} ICSID Convention, Article 51.

\textsuperscript{105} ibid.

\textsuperscript{106} See, e.g. Micula v Romania, ICSID Case No. ARB/05/20, Decision on Annulment [122].
\end{footnotesize}
the ICSID Convention’s exhaustive list of five grounds.\textsuperscript{107} We comment here on three of the most commonly-invoked. First, that the tribunal manifestly exceeded its powers.\textsuperscript{108} The word “manifest” has been interpreted by several committees to mean “obvious”, “clear” or “self-evident”.\textsuperscript{109} This ground has been the basis of five partial annulment decisions and four full annulment decisions.\textsuperscript{110} Secondly, another commonly invoked ground of annulment\textsuperscript{111} is that there has been a serious departure from a fundamental rule or procedure. Examples of fundamental rules of procedure include: (i) equal treatment of the parties;\textsuperscript{112} (ii) the right to be heard;\textsuperscript{113} (iii) an independent and impartial tribunal;\textsuperscript{114} (iv) the treatment of evidence and burden of proof;\textsuperscript{115} and (v) deliberations among members of the tribunal.\textsuperscript{116} Thirdly, that the award fails to state the reasons on which it is based.\textsuperscript{117} This ground is intended to ensure the reader can understand the facts and law applied by the tribunal in coming to its conclusion; it is not concerned with the correctness of the tribunal’s reasoning.

A party seeking annulment should commence proceedings by an application in writing to the Secretary-General.\textsuperscript{118} A 3-member \textit{ad hoc} committee will then be appointed by the Chairman of the Administrative Council.\textsuperscript{119} The application for annulment must be made within

\textsuperscript{107} Set out in ICSID Convention, Article 52: “(a) that the Tribunal was not properly constituted; (b) that the Tribunal has manifestly exceeded its powers; (c) that there was corruption on the part of a member of the Tribunal; (d) that there has been a serious departure from a fundamental rule of procedure; or (e) that the award has failed to state the reasons on which it is based.” See Appendix D.

\textsuperscript{108} ICSID Convention, Article 52(b). ICSID’s Updated Background Paper on Annulment for the Administrative Council of ICSID dated 5 May 2016 (“The ICSID Background Paper”), p. 56, noted that this ground has been raised in every case (but one) that has led to an issued decision on annulment.

\textsuperscript{109} See, e.g. \textit{Vivendi II}, ICSID Case No. ARB/09/19; \textit{Micula}, ICSID Case No. ARB/05/20; and \textit{Wena}, ICSID Case No. ARB/98/4.

\textsuperscript{110} The ICSID Background Paper, pp. 57-58.

\textsuperscript{111} The ICSID Background Paper, p. 60, noted that this ground has been invoked in 41 proceedings that led to a decision and has ultimately been the basis of one full annulment decision and two partial annulment decisions.

\textsuperscript{112} \textit{Iberdrola Energia SA v Republic of Guatemala}, ICSID Case No. ARB/09/5.

\textsuperscript{113} \textit{Wena Hotels Ltd v Arab Republic of Egypt}, ICSID Case No. ARB/98/4.

\textsuperscript{114} \textit{EDF International SA and others v Argentine Republic}, ICSID Case No. ARB/03/23.

\textsuperscript{115} \textit{Total SA v Argentine Republic}, ICSID Case No. ARB/04/1.

\textsuperscript{116} \textit{Total SA v Argentine Republic}, ICSID Case No. ARB/04/1.

\textsuperscript{117} The ICSID Background Paper, p. 62, noted that this ground has been invoked in 50 proceedings that led to a decision and has ultimately been the basis of two full annulment decisions and six annulment decisions.

\textsuperscript{118} ICSID convention, Article 52(1).

\textsuperscript{119} ICSID convention, Article 52(2).
120 days after the date award is rendered. The committee has the following options on annulment: reject all grounds for annulment (i.e. the award remains intact), uphold one or more grounds in respect of part of the award (i.e. a partial annulment), uphold one/more grounds in respect of the entire award (i.e. a full annulment), or exercise its discretion not to annul notwithstanding an error has been identified (i.e. the award remains intact). The committee may stay enforcement pending its decision and a committee’s decision is not subject to appeal. In the event of annulment, the only redress available to a party is to resubmit the dispute to another tribunal. If the application for annulment is unsuccessful, the award is binding.

§ 15 Enforcement outside ICSID

If an investor-state arbitration was not overseen by ICSID, the simplified ICSID enforcement regime does not apply. Instead, the normal rules under the 1996 Act will apply – even if the proceedings were held pursuant to an international investment treaty.

For instance, an ad hoc arbitration under the UNCITRAL rules may be enforced, if seated in a New York Convention State, under the New York Convention regime or, if seated in London, as a domestic award in the ways described above. This is again subject to the important caveat of sovereign immunity.

§ 16 Enforcement of Intra-EU BIT Awards following Achmea

In March 2018, the Court of Justice of the European Union issued its judgment in Slovak Republic v Achmea, holding that the investor-state dispute settlement (“ISDS”) provision in the ICSID convention, Article 52(3). If the annulment is requested on grounds of corruption, the proceedings must be brought within 120 days after discovery of the corruption and in any event within 3 years of the date the award rendered.

The ICSID Background Paper, p. 10 et seq., noted that since the ICSID Convention entered into force in 1966: ICSID registered 505 Convention arbitration cases, 334 of which were concluded; 228 ICSID Awards were rendered; 90 annulment proceedings were instituted, 72 of which were concluded; 20 annulment proceedings were discontinued; 37 decisions refused annulment. 10 decisions annulled the Award in part; 5 decisions annulled the Award in full; only 2% of ICSID Awards rendered were fully annulled and only 4% were partially annulled; 54% of annulment proceedings were initiated by respondents (states or state entities in all instances); and 40% were initiated by claimants; in 6% of annulment proceedings, both parties filed an application.
Netherlands-Slovakia bilateral investment treaty (the “BIT”) was precluded by the Treaty on the Functioning of the European Union.\(^\text{122}\)

In the underlying dispute, Achmea had succeeded in its arbitration brought under the BIT for damages arising out of Slovakia’s legislative changes to the Slovak health insurance market.\(^\text{123}\) Slovakia argued unsuccessfully before the arbitral tribunal that the BIT’s ISDS provision was incompatible with EU law. The same or a similar argument had been made (always unsuccessfully)\(^\text{124}\) by defendant EU Member States (often with supportive submissions from the European Commission) in numerous other arbitrations brought by EU investors.\(^\text{125}\)

In this case, Slovakia subsequently initiated annulment proceedings in the Frankfurt Court (the seat of the arbitration), where this argument was also rejected. On appeal from this decision, the German Federal Court was also minded to disagree with Slovakia, but referred the question to the CJEU, given its “considerable importance because of the numerous bilateral investment treaties still in force between Member States which contain similar arbitration clauses.”\(^\text{126}\)

In its judgment, the CJEU disagreed with the tribunal, the court at first instance, the appeal court and its Advocate General\(^\text{127}\) – ruling that the ISDS provision in the BIT was incompatible with EU law (as Slovakia had argued). In particular, the CJEU considered that the ISDS provision was precluded by Article 267 (jurisdiction of the CJEU)\(^\text{128}\) and Article 344


\(^{123}\) Achmea BV v Slovak Republic (PCA Case No. 2008-13), Final Award, dated 7 December 2012.

\(^{124}\) At least, so far as is publically known.

\(^{125}\) Eastern Sugar BV v Czech Republic (SCC Case No. 088/2004); European American Investment Bank AG v Slovak Republic (PCA Case No. 2010-17); Electrabel SA v Hungary (ICSID Case No. ARB/07/19) in which Hungary did not raise an intra-EU BIT jurisdictional objection, but the European Commission did; EDF International SA v Hungary; AES Summit Generation Limited and AES-Tisza Erőmű Kft v Hungary (ICSID Case No. ARB/07/22); Charanne BV and Construction Investments Sarl v Spain (SCC Case No. 062/2012); Blusen SA v Italy (ICSID Case No. ARB/14/3) in which the tribunal’s final award, given on 27 December 2016, noted that “[d]espite the fact that the EC has intervened in many other intra-EU arbitrations, as far as has been publicly reported, no tribunal yet has upheld this objection to jurisdiction” and “[o]verall the effect of these decisions is a unanimous rejection of the intra-EU objection to jurisdiction” (paras. 302-3).

\(^{126}\) Slovak Republic v Achmea BV (fn 122), para. 14.

\(^{127}\) Advocate General Wathelet’s opinion, delivered 19 September 2017 (Case C-284/16, Slovak Republic v Achmea BV [2017] ECLI:EU:C:2017:699).

\(^{128}\) “The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
(that Member States shall “not […] submit a dispute concerning the interpretation or application of the [EU] Treaties to any method of settlement other than those provided for [in the EU Treaties]”). The CJEU did not consider it necessary also to decide the question whether it was incompatible with TFEU Article 18 (non-discrimination).

The CJEU desired to protect “the autonomy of the EU legal system”\textsuperscript{129} and the “uniform interpretation of EU law.”\textsuperscript{130} The EU judges were concerned that arbitration under the BIT removed the interpretation of EU law from the jurisdiction of the CJEU: “it is for the national courts […] and the Court of Justice to ensure the full application of EU law in all Member States and to ensure judicial protection of the rights of individuals under that law”.\textsuperscript{131}

\textit{Achmea} has proved to be the most controversial decision relating to EU ISDS in recent times. The CJEU’s answers to the questions put to it by the German Federal Court have raised many more questions. The CJEU expressly distinguished commercial arbitration,\textsuperscript{132} but in the words of Lord Justice Gross, “the decision and its reasoning could aptly be described as troubling more generally”.\textsuperscript{133} Does the CJEU’s reasoning preclude ISDS in all 196 intra-EU BITs or just those with ISDS provisions worded similarly to the Netherlands-Slovakia BIT? Are the 1,400 BITs between EU States and non-EU States affected?

A further question is whether \textit{Achmea} impacts multilateral treaties to which the EU itself is a party, such as the Energy Charter Treaty (“ETC”). The European Commission has taken the position that the ECT’s ISDS article\textsuperscript{134} “if interpreted correctly, does not provide for an investor-State arbitration clause applicable between investors from a Member State[] of the EU and another Member State[] of the EU” and “if interpreted as applying intra-EU, is

\textsuperscript{129} Case C-284/16, Slovak Republic v Achmea BV [2018] ECLI:EU:C:2018:158, [2018] 4 WLR 87, para. 32.
\textsuperscript{130} ibid, para. 37.
\textsuperscript{131} ibid, para. 36.
\textsuperscript{132} ibid, para. 55.
\textsuperscript{134} ECT, Article 26 (\textit{Settlement of Disputes between an Investor and a Contracting Party}).
incompatible with EU primary law and thus inapplicable.”¹³⁵ In at least two arbitrations, however, arbitral tribunals have since concluded that the ECT permits intra-EU investor-state claims under international law.¹³⁶ In Vattenfall v Germany, the tribunal considered that any issue of enforceability “is a separate matter which does not impinge upon the Tribunal’s jurisdiction.”¹³⁷ Whilst it would seem only a matter of time before another reference is made to the CJEU,¹³⁸ it may be around two years before the CJEU then comes to a decision.¹³⁹

In the context of Achmea, ‘Brexit’ raises some novel questions. After any transition period (or, if no withdrawal agreement is reached, at 11pm on 29 March 2019) – and subject of course to any subsequent UK-EU deal which might be struck – the TFEU will no longer bind the UK. But the UK’s BITs with EU Member States (and the remaining intra-EU BITs and other multilateral agreements) will survive. In principle, the UK’s new status as a non-Member State, free from the strictures of EU law and policy and oversight by the CJEU, could offer competitive advantages. For example, London might be a convenient place for incorporation of investment vehicles. And should the English Court be prepared to recognise and enforce awards made pursuant to intra-EU BITs its attractiveness as a seat and place of enforcement will be strengthened. But might there be a move by the EU to negotiate away these consequential competitive advantages? This remains to be seen.

¹³⁶ See Masdar Solar & Wind Cooperatief U.A. v Spain, ICSID Case No. ARB/14/1; Vattenfall AB and others v Germany, ICSID Case No. ARB/12/12. In a number of other arbitrations whose awards have become public, it is known that the tribunals refused to allow jurisdictional objections or re-open proceedings based upon Achmea and so did not consider the substance (Antaris GMBH and another v Czech Republic, PCA Case No. 2014-01, 2 May 2018; Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar BV v Spain, ICSID Case No. ARB/13/31, 15 June 2018).
¹³⁷ Vattenfall AB and others v Germany, ICSID Case No. ARB/12/12, Decision on the Achmea issue, dated 31 August 2018, para. 230.
¹³⁸ Spain has requested that the Swedish court seek a preliminary ruling from the CJEU. The Svea Court of Appeal, has suspended enforcement of an ECT award against Spain, but, at the time of writing, has not yet decided upon Spain’s request (Case No. T 4658-18).
¹³⁹ For instance, the Achmea reference reached the CJEU on 23 May 2016, having been requested by the German Federal Court on 3 March 2016, but the CJEU’s decision was handed down on 6 March 2018.
§ 17  Sovereign Immunity

As a result of the doctrine of state immunity, the enforcement of arbitral awards against uncooperative sovereign states requires additional considerations, as compared to enforcement of a conventional award against a purely private entity. In many jurisdictions, state immunity affords sovereign states (as well as their emanations, agencies, etc.) with protection from claims in foreign national courts. As state involvement in commercial dealings has developed, the historical approach of absolute immunity has tended to give way to a modern more restrictive approach which recognises a distinction between a state’s public and commercial activities. Whether, where and how this distinction is drawn is a matter of national law in each jurisdiction.  

The principal English legislation regulating state immunity is the State Immunity Act 1978 (“SIA”). Pursuant to s. 1 of the SIA, as a general rule, a “State is immune from the jurisdiction of the courts of the United Kingdom”, but the SIA sets out exceptions to that general immunity. Of particular relevance to arbitration, s. 9 of the SIA provides that, if a state has agreed in writing to submit a dispute to arbitration, the state is not immune in respect of proceedings in the English Court relating to the arbitration. This exception applies to all agreements to arbitrate, whether or not they relate to commercial transactions, whether or not the dispute is governed by English law and whether or not the arbitration is seated in England. No distinction is made here. For example, in PAO Tatneft v Ukraine, Ukraine failed to set aside an enforcement order made by the English Court under s.101 of the 1996 Act in respect of an award made by a Paris-seated tribunal pursuant to an arbitration agreement in a bilateral investment treaty. The English Court held that s. 9 of the SIA deprived

140 The United Nations has endeavoured to streamline national legislation on state immunity, but the United Nations Convention on Jurisdictional Immunities of States and their Property has not yet been signed by sufficient countries to be implemented. However, while the convention has not been adopted, it has been influential on the English Court as a reference for international practice.
141 See Appendix H.
142 s. 9 of the SIA.
Ukraine of s. 1 immunity – Ukraine had agreed to submit such disputes to arbitration by virtue of the arbitration agreement in the BIT.\textsuperscript{144}

An important distinction, however, must be made between immunity from recognition and enforcement of an award and immunity from execution of the award.\textsuperscript{145} Under English law, a state’s waiver of immunity, by virtue of submission to arbitration, extends not only to proceedings related to the resolution of the substantive dispute itself, but also to any subsequent recognition and enforcement proceedings against the state.\textsuperscript{146} So, if the award against the state is a New York Convention award or an ICSID award, the respective principles and procedures will apply. The SIA’s state immunity provisions therefore do not generally pose an insurmountable obstacle to the recognition and enforcement in England of arbitral awards against sovereign states.\textsuperscript{147}

More complex difficulties arise, however, when it comes to execution of an award against a state’s assets. As a general rule, a state’s property cannot be subject to “any process of enforcement of a judgment or an arbitration award […]”.\textsuperscript{148} However, execution is possible “in respect of property which is for the time being in use or intended for use for commercial purposes.”\textsuperscript{149}

The key question is what the property is actually being used for – “[t]he nature of the origin” of the obligation which it is sought to enforce is irrelevant.\textsuperscript{150} A relatively recent illustration is given by \textit{L R Avionics Technologies v Nigeria}.\textsuperscript{151} The arbitral award in this case

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\textsuperscript{144} \textit{PAO Tatneft v Ukraine} [2018] EWHC 1797 (Comm). Its appeal is due to be heard by the end of July 2019.

\textsuperscript{145} For the distinctions between recognition, enforcement and execution, see \S 1 and \S 2 above.


\textsuperscript{148} sub-s. 13(2)(b) of the SIA.

\textsuperscript{149} sub-s. 13(4) of the SIA.

\textsuperscript{150} \textit{Ser Vaas Inc v Rafidain Bank & Ors} [2012] UKSC 40, [2013] 1 AC 595 [15].

was recognised and incorporated into an English judgment in July 2016, but a subsequent attempt to enforce the award by levying execution against a property owned by Nigeria was not permitted by the English Court on the basis that the property was not being used “for commercial purposes”. The property was leased to a private company by the state, but was being used for the purposes of the state’s consular activities. The case highlights the great care that must be taken from the outset of a claim against a state to consider possible routes not only to enforcement but also to execution of a successful award.
D. PROCEDURE & PROCEDURAL ISSUES

§ 18 Applications to Enforce

The same procedure applies whether the enforcing party is relying on s. 101 or s. 66 of the 1996 Act.\textsuperscript{152} The enforcing party must issue and file an arbitration claim form, setting out its application for permission to enforce the award, along with a draft order and evidence regarding the extent to which the award has not been complied with, along with the original arbitration agreement (or a duly certified copy), the duly authenticated original award or duly certified copy, plus certified translations if the award or agreement are not in English, and details of the parties.\textsuperscript{153} The Court will then decide whether (i) to make an order for enforcement on the basis of the papers, or (ii) to require service of the claim form on the respondent.\textsuperscript{154}

If the Court makes the enforcement order on the papers, it will need to be served on the respondent (which can be done without the permission of the Court). The Court will prescribe the number of days within which the respondent may apply to set aside the order pending which the order cannot be enforced.

If the Court decides instead that the claim form should be served on the respondent before any enforcement order is made, the respondent will then be given a set period within which to acknowledge service and to indicate whether it intends to defend the claim. Permission needs to be sought to serve the claim form out of the jurisdiction.\textsuperscript{155} This is likely to be a formality but, as always, will depend on the facts of the case – it is helpful to be able to point to assets in the jurisdiction against which the award creditor intends to seek execution but this is probably not mandatory.\textsuperscript{156}

\textsuperscript{152} See CPR Part 62 (Arbitration Claims), r. 62.17 and accompanying Practice Direction. The procedural machinery, however, for recognition of an ICSID award is different.

\textsuperscript{153} Limitation issues can arise; see s. 7 of the Limitation Act 1980. The Act’s application to foreign (rather than domestic) awards can lead to some complexity.

\textsuperscript{154} CPR r. 62.17 and 62.18.

\textsuperscript{155} CPR r. 62.5; Practice Direction 62, para. 3.1.

If the respondent contests enforcement at either stage, the Court will give directions for the exchange of pleadings, evidence etc.

§ 19 Confidentiality

Confidentiality is often cited as one of the chief attractions of international arbitration over litigation in a national court. 87% of respondents to QMUL’s 2018 International Arbitration Survey stated that confidentiality has some importance\(^\text{157}\) (although only 35% placed confidentiality in the top three most important characteristics of international arbitration)\(^\text{158}\).

Hence, for many parties, it is a significant question whether enforcement of an award in a particular jurisdiction will come at the price of losing confidentiality. In England, an arbitration claim form (required to commence an enforcement action)\(^\text{159}\) cannot be inspected without permission of the court.\(^\text{160}\) Likewise, English court arbitration proceedings are generally heard in private (except a determination of a preliminary point of law or an appeal on a question of law from an English-seated arbitration).\(^\text{161}\) These general rules, however, represent only the “starting point”.\(^\text{162}\) Questions of confidentiality/publication are subject to the judge’s discretion. “[O]nce the question of publication is raised, the judge’s task is to weigh all relevant circumstances”.\(^\text{163}\)

It is a separate question whether the court’s judgment will be published. Even though a hearing may have been heard in private, there is a greater public interest in court judgments. With the public interest in mind, the English Court will endeavour to give its judgment in public, whilst safeguarding sensitive information (which may include the identity of the parties).\(^\text{164}\) It

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\(^{157}\) ‘2018 International Arbitration Survey: the Evolution of International Arbitration’, Queen Mary University of London School of International Arbitration, pp. 3 and 27.

\(^{158}\) Ibid, p. 7. Interestingly, for in-house counsel respondents, “confidentiality and privacy” was the third most selected characteristic (compared to fifth for the respondent population as a whole).

\(^{159}\) See preceding § 18 above.

\(^{160}\) Practice Direction 62, para. 5.1.

\(^{161}\) CPR r. 62.10.


\(^{163}\) Moscow City Council (fn 162) [42].

\(^{164}\) Moscow City Council (fn 162) [39].
will generally be a significant factor against privacy and anonymity, if the matter is already in the public domain as a result of enforcement proceedings in other jurisdictions.\textsuperscript{165}

\textsuperscript{165} Symbion Power LLC v Venco Imtiaz Construction Co [2017] EWHC 348 (TCC), [2017] BLR 297 [86]-[95]; Orascom TMT Investments Sarl (formerly Weather Investments II Sarl) v Veon Ltd (formerly VimpelCom Ltd) [2018] EWHC 985 (Comm) [45]-[48].
E. PRELIMINARY RELIEF & INTERIM MEASURES

Where a foreign-seated arbitral tribunal grants preliminary relief or an interim measure, whether or not it is enforceable by the English Court will depend on whether it is substantively an “award” within the meaning of the 1996 Act. The question is whether the measure ordered by the tribunal is “final and binding on the issues determined by it.” This question will be resolved according to the law governing the arbitration proceedings but ‘finality’ is considered from an English perspective.

When deciding this question, the English Court will look at the substance of the interim measure, rather than how it is labelled or framed. Regardless of how the measure is titled (“order”, “direction”, “award”, “partial”, “final”, “interim” or “provisional”), it “is either final and binding or it is not.” If final and binding, it is an award and can enforced under the 1996 Act by the same routes set out above (principally, under s. 66 for non-New York Convention awards and s. 100 for New York Convention awards). If not final or binding, the order will not be enforceable in the English Court. In those circumstances, an application would instead need to be made to the relevant supervising national court for any support available under its national arbitration law.

In practice, this issue is most relevant to the enforcement of partial awards and anti-suit injunctions made by arbitral tribunals. A partial award may perhaps be more accurately described as an “interim final award” that is final as to what is decided but leaves other matters to be decided. An anti-suit injunction (in the present context) is typically an order to refrain from commencing or continuing other proceedings brought in breach of an arbitration agreement. In the latter regard, historically, the English Court was able and willing to injunct

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166 Rotenberg v Sucafina SA [2012] EWCA Civ 637, [2012] 2 All ER (Comm) 952 [27] (albeit this case concerned a domestic arbitral award).


168 Rotenberg (In 166) [26].

169 For example, under s. 42 of the 1996 Act, the English Court may, unless otherwise agreed, make an order requiring a recalcitrant party to comply with a peremptory order made by tribunal in an English-seated arbitration. This provision, however, does not apply to foreign-seated arbitrations.
parties from commencing or continuing court proceedings in Europe or elsewhere brought in breach of an agreement to arbitrate. However, in 2009, the CJEU held that anti-suit injunctions granted by the court of one EU Member State against the court of another EU Member State run counter to the principle of mutual trust within the EU under which each national court decides its own jurisdiction according to a common set of rules.\(^{170}\)

Subsequently, there had been some argument whether revisions of the Brussels regime (i.e. the European rules dealing with jurisdiction and recognition and enforcement of judgments in civil and commercial matters) had the effect of enabling Member State Courts to issue intra-EU anti-suit injunctions once again in the context of arbitration.\(^{171}\) In 2018, the English Commercial Court gave its view.\(^{172}\) The judge held that “there is nothing in the Recast Regulation[\(^{173}\)] to cast doubt on the continuing validity of the [CJEU’s] decision in [West Tankers] which remains an authoritative statement of EU law.”\(^{174}\) As result, whilst he or she ordered the recently nationalised Russian bank to discontinue Russian court proceedings brought in breach of an arbitration agreement, he concluded that he had no such power to restrain related court proceedings in Cyprus.

The CJEU has, however, determined that EU Member State national courts may still enforce an anti-suit injunction that has been issued by an arbitral tribunal against EU Member State court proceedings.\(^{175}\) So, if an arbitral tribunal orders a party to desist in court proceedings before the national court of one EU Member State, another national court may

\(^{170}\) Case C-185/07, Allianz SpA v West Tankers Inc [2009] ECR I-663, [2009] 1 AC 1138 disagreeing with the opinion of the House of Lords (now the UK’s Supreme Court) in West Tankers Inc (Respondents) v RAS Riunione Adriatica di Sicurta SpA and others (Appellants) [2007] UKHL 4, [2007] 1 All ER (Comm) 79.


\(^{174}\) Nori Holding Ltd v Public Joint-Stock Co ‘Bank Otkritie Financial Corp’ [2018] EWHC 1343 (Comm) [99].

\(^{175}\) Case C-536/13, Gazprom OAO v Republic of Lithuania [2015] ECLI:EU:C:2015:316, [2015] 1 WLR 4937: in this case, the CJEU found that the enforcement by a Lithuanian court of an arbitral award from a Swedish arbitral tribunal granting an anti-suit injunction was not inconsistent with Brussels I Regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 – see (fn 171).
enforce that award under the New York Convention (even though the national court itself would not be permitted to make an intra-EU anti-suit injunction).

Since the English Court lost its power to injunct a party from wrongly proceeding in another EU Member State’s Court as a result of EU law, the UK’s exit from the EU might return that power to the English Court – but this will depend on the post-Brexit arrangements for judicial cooperation in civil and commercial matters. The current draft of the Withdrawal Agreement suggests there would be no change until at least the end of a transition period on 1 January 2021. Further discussion of the potential effect of Brexit on enforcement is at § 22 below.
III. ENFORCEMENT OF FOREIGN COURT JUDGMENTS

§ 20 Overview

The English regime for the enforcement of foreign judgments has been described as being “so fragmentary that it defies elegant explanation”. There are essentially three groups of rules whose application will turn principally on where the foreign judgment comes from: the Brussels I regime which applies to EU Member State judgments, two statutory registration schemes dealing with specific non-EU countries and which give effect to bilateral treaties or commonwealth legislation, and the residual common law rules. Those three groups are considered in turn below, followed by discussion of certain procedural matters. We are concerned only with judgments on civil and commercial matters, not on specialist matters such as family, insolvency, inheritance or the like. At the time of writing – six months before ‘Brexit’ – how English private international law on recognition and enforcement of foreign judgments might change (if at all) and when it might do so remains unresolved. For further discussion, see § 22 below.

As a preliminary point, from an English perspective the relevance of the 2005 Hague Convention on Choice of Court Agreements (“Hague Convention”) is currently limited but could be set to grow if the UK departs from the EU. In brief, the Hague Convention provides for the recognition and enforcement of judgments in civil and commercial matters given by a court of a Contracting State designated in an exclusive choice of court agreement. The Convention also contains additional provision allowing for reciprocal enforcement of judgments made pursuant to non-exclusive choice of court agreements. Currently, the EU (including

176 Again, a distinction should be drawn between recognition and enforcement: Clarke v Fennoscandia Ltd [2007] UKHL 56, 2008 SC (HL) 122, [21]-[22]. cf. (fn 6). We focus on recognition and enforcement, not recognition alone as a defensive measure.

177 Briggs, Private International Law in English Courts (OUP, 2014), §6.01.

178 “[A] choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise” (Hague Convention, Article 3(b)). Article 22 of the Hague Convention allows for reciprocal enforcement of judgments made pursuant to non-exclusive choice of court agreements, but only if the states in question have made a declaration to this effect – no state has yet elected to do so.
Denmark since May 2018), Mexico, Montenegro and Singapore have ratified the Hague Convention. The United States, Ukraine and China have signed, but not ratified. The importance of the Hague Convention will increase if/when it is ratified by further states.\textsuperscript{179} As it stands, the Hague Convention has a fraction of the jurisdictional coverage of the New York Convention for enforcement of arbitral awards.

Presently, the UK is bound by the Hague Convention as a result of the EU’s ratification, but the enforcement of EU Member State judgments within the EU is regulated by EU law (see \textsection\textsuperscript{21} below). If, following ‘Brexit’, the UK ratifies the Hague Convention in its own name (which is the UK Government’s stated intention,\textsuperscript{180} as well as to implement it domestically “as soon as is practicable” after ‘Brexit’ day\textsuperscript{181}), and the EU-UK negotiations result in no alternative agreement, the Convention would gain an important role in enforcement between the UK and the remaining EU Member States for qualifying judgments.\textsuperscript{182}

\textsection\textsuperscript{21} Enforcement of EU Judgments: The Brussels I Regime

One of the key objectives of the European project is to achieve the free circulation of judgments in civil and commercial matters between Member States.\textsuperscript{183} In this sense, the Brussels I regime has been a success story. As a result, judgments from other Member States are rather less foreign than judgments from non-Member States.\textsuperscript{184} For now, until the consequences of the UK’s ‘Brexit’ from the EU are worked out, Chapter III of Regulation

\textsuperscript{179} The Convention’s interaction with the EU’s enforcement regime may in due course give rise to some complexity.
\textsuperscript{180} In September 2018, making contingency for a no-deal scenario, the UK Government laid regulations before Parliament: the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018.
\textsuperscript{182} The Hague Conference on Private International Law (HCCH) ‘Judgments Project’ has wider ambitions to develop a broader convention for the international enforcement of judgments. In 2018, an HCCH ‘Special Commission’ published a revised draft convention which would not be restricted to judgments pursuant to exclusive choice of court agreements. This draft is due to be further discussed in Diplomatic Session in 2019. When this new convention will be finalised, and then the appetite of states to sign-up (given the relatively slow progress of the Hague Convention, which is narrower in scope and thereby less controversial), remains to be seen. For now, its influence (if any) lies in the future.
\textsuperscript{183} TFEU, Article 81(1). See also Recital (1), (6) and (27) of Regulation 1215/2012.
\textsuperscript{184} Briggs, \textit{Private International Law in English Courts} (OUP, 2014), §6.20.
1215/2012\textsuperscript{185} is the way in which judgments in non-excluded\textsuperscript{186} civil and commercial matters from the courts of Member States of the EU in proceedings commenced on or after 10 January 2015 are recognised\textsuperscript{187} and enforced in England.\textsuperscript{188}

Following reform to the Brussels I regime, a judgment\textsuperscript{189} given in a Member State court which is enforceable in that Member State (referred to as the “court of origin”)\textsuperscript{190} shall be enforceable in the other Member States, including the United Kingdom, without any formal declaration of enforceability (exequatur) being required from the enforcing court.\textsuperscript{191} It is irrelevant that the Member State court’s judgment might be against a non-Member State domiciled person. In essence, any qualifying Member State judgment will be enforceable in England as if it were an English judgment.\textsuperscript{192}

The previous version of the rules, Brussels Regulation (EC) No 44/2001, which applies to proceedings after 1 February 2002 and up until 10 January 2015 (and which therefore has ongoing, but diminishing, relevance to the enforcement of judgments), is different in that it requires an application for registration of a Member State judgment to be made to the English Court before it can be received into the English legal order.\textsuperscript{193}

\begin{footnotesize}
\textsuperscript{185} Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), [2012] OJ L351/1. See Appendix E. In this section, unless otherwise stated, references to ‘Articles’ are to Articles of this Regulation.

\textsuperscript{186} See Regulation 1215/2012, Article 1(2) for areas to which the Regulation shall not apply.

\textsuperscript{187} Recognition requires no special procedure: Regulation 1215/2012, Articles 36-37.


\textsuperscript{189} Defined at Regulation 1215/2012, Article 2: “any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court [...].”

\textsuperscript{190} Regulation 1215/2012, Article 2(f).

\textsuperscript{191} Regulation 1215/2012, Article 39.

\textsuperscript{192} Regulation 1215/2012, Article 41.

\textsuperscript{193} Regulation 44/2001, Article 38(2). For recent English judgments on questions continuing to arise out of the application of this Regulation, see Cyprus Popular Bank Public Co Ltd v Vgenopoulos [2018] EWCA Civ 1, [2018] QB 886 and Christofi v National Bank of Greece (Cyprus) Ltd [2018] EWCA Civ 413.
\end{footnotesize}
It is now up to the judgment debtor to apply for refusal of enforcement.\textsuperscript{194} Article 45(1) of Brussels Regulation 1215/2012\textsuperscript{195} contains two categories of grounds on which enforcement can be challenged: non-jurisdictional or substantive\textsuperscript{196} and jurisdictional.\textsuperscript{197}

In relation to the former category, while public policy (Article 45(1)(a)) is to be determined by Member States according to their own conceptions of what it requires, such determination is not untrammelled but operates within limits defined by the CJEU.\textsuperscript{198} The fact that a judgment given in a Member State is contrary to EU law does not justify that judgment not being recognised in another Member State on the grounds that it infringes public policy in that latter state where the error of law relied on does not constitute a manifest breach of a rule of law regarded as essential in the EU legal order.\textsuperscript{199}

In relation to the latter category, (i) it is notable that it does not cover the complaint that the court of origin ought to have given effect to a jurisdiction agreement, (ii) public policy cannot be invoked to challenge the jurisdiction of the court of origin\textsuperscript{200} and (iii) other than the enumerated grounds, the jurisdiction of the court of origin cannot otherwise be challenged. It follows that if the defendant considers it has grounds to challenge the court of origin’s jurisdiction he is well-advised to do so as early as possible, in line with the national court’s rules. Otherwise, he risks being too late. No other grounds for non-recognition exist and there is an express prohibition on review by the court in which enforcement is sought of the

\textsuperscript{194} Regulation 1215/2012, Article 46ff. This reverses the position under Regulation 44/2001.
\textsuperscript{195} Regulation 1215/2012, Article 45(1): “On the application of any interested party, the recognition of a judgment shall be refused: (a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed; (b) where the judgment was given in default of appearance, if the defendant was 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, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; (c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed; (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or (e) if the judgment conflicts with: (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or (ii) Section 6 of Chapter II.”
\textsuperscript{196} Regulation 1215/2012, Article 45(1).
\textsuperscript{197} Regulation 1215/2012, Article 45(1)(e).
\textsuperscript{200} Regulation 1215/2012, Article 45(3).
substance of a judgment.\textsuperscript{201} With only minor exceptions, the grounds upon which a judgment debtor can resist enforcement of a Member State judgment are the same in Regulation 44/2001.\textsuperscript{202}

Overall, once judgment has been given in one Member State court in accordance with the jurisdictional rules contained in Regulation 1215/2012 (or Regulation 44/2001), non-enforcement in another Member State will be rare. Execution is a matter for each Member State’s national laws.\textsuperscript{203}

\textbf{§ 22 Enforcement of EU Judgments: After Brexit}

As explained in the preceding section, enforcement of EU Member State judgments in other EU Member States is a matter of EU law. As such, were the UK to cease to be a Member State, then, without more, the existing enforcement regime would cease to apply. By contrast, EU-seated arbitral awards could continue to be enforced pursuant to the New York Convention.\textsuperscript{204}

According to the EU’s February 2018 draft of the Withdrawal Agreement, the existing EU regime would continue to apply only to judgments handed down before the end of a two-year post-‘Brexit’ transition period. Subsequently, in June 2018, EU and UK negotiators jointly announced that they had instead reached agreement that the existing regime will continue to apply to judgments given in legal proceedings begun before the end of the transition period.\textsuperscript{205} Given, however, the principle that “nothing is agreed until everything is agreed” and the mooted possibility of a “no deal” ‘Brexit’, it remains uncertain whether the existing EU regime will

\textsuperscript{201} Regulation 1215/2012, Article 52. Although, as Case C-78/95, Hendrikman v Magenta Druck & Verlag GmbH [1996] ECR I-4943 confirms, sometimes the grounds on which recognition/enforcement can be refused require such a review.

\textsuperscript{202} Regulation 44/2001, Articles 34 and 35. The difference is in respect of the employment jurisdiction provisions.

\textsuperscript{203} Report of Professor Schlosser [1979] OJ C59/71, [221] and Case 119/84, Capelloni v Pelkmans [1985] ECR 3147, [16]. As for whether this means that post-judgment orders in aid of enforcement are outside the scope of the Brussels I regime, see Woolrich, Brexit, international jurisdiction and the space between adjudication and execution [2017] LMCLQ 448, 456.

\textsuperscript{204} See § 4 above.

continue in any way after 11pm on 29 March 2019. In September 2018, the UK Government published a “technical notice” setting out its “guidance” on “[h]andling civil legal cases that involve EU countries if there’s no Brexit deal”, whilst stating that its acceleration of preparations “does not reflect an increased likelihood of a ‘no deal’ outcome”.206

Most uncertain is the nature of the UK-EU enforcement regime (if any) after the conclusion of any agreed transition period. This has yet to be agreed in principle. Following various evidence-giving sessions before various Parliamentary Committees, the UK Government has expressed a desire for “a new, bespoke agreement across the full range of civil judicial cooperation”, including whose courts will have jurisdiction and the cross-border enforcement of judgments.207 It remains to be seen whether agreement will be reached and, if so, the precise form that agreement will take.208

§ 23 Statutory Registration Schemes

There are two statutory schemes which allow a foreign judgment to be registered and enforced: the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933.209 The procedural pattern is the same as that adopted by Regulation 1215/2012 (but is distinct from the residual common law rules examined below). The geographical reach of these schemes is relatively limited: the former applies to various colonial and Commonwealth countries;210 the latter to countries with which a bilateral treaty has been

206 ‘Handling civil legal cases that involve EU countries if there’s no Brexit deal’, Department for Business, Energy & Industrial Strategy/Ministry of Justice, dated 13 September 2018.
208 Rather than speculate, future editions of this guide will deal with future developments.
209 For recent English judgments registering foreign commonwealth judgments under the 1920 Act and the 1933 Act, see respectively Berhad v Frazer-Nash Research Ltd [2018] EWHC 1848 (QB) and State Bank of India v Mallya [2018] EWHC 1084 (Comm).
210 For the full list, see Schedule 1 of the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Consolidation) Order 1984/129 (as amended). It includes the British Virgin Islands, the Cayman Islands, Ghana, Malaysia, New Zealand, Nigeria and Singapore. Singapore has also ratified the Hague Convention on Choice of Court Agreements: see § 20 above.
made (and which has been substantially\textsuperscript{211} superseded by Regulation 1215/2012).\textsuperscript{212} An application to set aside registration and thus prevent enforcement will be based on very similar grounds to those under the common law rules. They are examined in the following section.

\section*{§ 24 The Residual Common Law Rules}

In all other cases, the residual common law rules will apply. Technically, foreign judgments are not enforced under these rules which provide instead for an English judgment to be made in the same terms as the foreign judgment. It is then the English judgment which is executed in England.

In order to qualify for enforcement under the English common law rules, a foreign judgment must be: (a) final and conclusive (i.e. it cannot be revised or reviewed by the court which gave it; accordingly the possibility of appeal to a higher court does not affect the finality of the judgment),\textsuperscript{213} (b) given by a court which is regarded by English law as competent to do so (the foreign court’s view of the matter being irrelevant – this is sometimes referred to as ‘international jurisdiction’), (c) for a fixed sum of money\textsuperscript{214} (but not multiple damages\textsuperscript{215}) and not be the enforcement of a foreign penal or revenue or other public law,\textsuperscript{216} and (d) none of the (limited) defences to recognition/enforcement can apply.

To demonstrate that the foreign court had ‘international jurisdiction’ as a matter of English law, one must be able to show either (a) presence of the judgment debtor within the foreign court’s territorial jurisdiction when proceedings were instituted (which appears to mean service of process)\textsuperscript{217} or (b) that the judgment debtor submitted to the foreign court, either by

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{211} But not entirely: the 1933 Act does not have an ‘arbitration exception’.
  \item \textsuperscript{212} The 1933 Act applies to Australia, Canada, India, Pakistan, the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man, Israel, Suriname and Tonga.
  \item \textsuperscript{213} \textit{Nouvion v Freeman} (1889) 15 App Cas 1, 9.
  \item \textsuperscript{214} Albeit that this is an over-simplification – a foreign non-money judgment can in certain circumstances be enforced: see further \textit{Dicey, Morris & Collins}, §14-022.
  \item \textsuperscript{215} s. 5 of the Protection of Trading Interests Act 1980.
  \item \textsuperscript{216} See, e.g. \textit{Huntingdon v Attrill} [1893] AC 150; see also \textit{Government of India, Ministry of Finance (Revenue Division) v Taylor & Anor} [1955] AC 491, [1955] 1 All ER 292.
  \item \textsuperscript{217} In the case of companies, this means “\textit{has a reasonably fixed and definite place of business}”: see \textit{Adams & Ors v Cape Industries plc & Anor} [1990] Ch 433, [1991] 1 All ER 929.
\end{itemize}
\end{footnotesize}
appearance\textsuperscript{218} (although not where the appearance is solely to contest jurisdiction\textsuperscript{219}) or contract. If local procedure or practice requires the defendant to plead the merits while making his jurisdictional challenge, this ought not to constitute a submission.\textsuperscript{220} But traps exist here for the unwise and any steps in the foreign proceedings should be taken carefully and sometimes not at all.\textsuperscript{221} For example, in \textit{Lloyd’s v Syria}, the English Court held that Syria had submitted to the US Court’s jurisdiction by filing a notice of appeal before making any reservation about jurisdiction.\textsuperscript{222}

Other than in these two categories of cases, international jurisdiction will not exist and a foreign judgment will not be enforceable in England under the common law rules. So whether a foreign court has jurisdiction according to its own laws, or whether the English Court would have exercised jurisdiction in similar circumstances, is irrelevant.

There are six defences to recognition and therefore enforcement of a foreign judgment at common law: (a) disregard of arbitration or choice of court agreement;\textsuperscript{223} (b) lack of local jurisdiction (where the judgment is a complete nullity); (c) fraud (a credible case must be made that the foreign court was the victim of or party to fraud; that the facts and matters were put before and rejected by the foreign court is not a bar\textsuperscript{224}); (d) breach of natural justice;\textsuperscript{225} (e) public policy; and (f) the existence of a prior English (or foreign) judgment which is inconsistent with

\textsuperscript{218} In \textit{Ningbo Jaingdongjiemao Import & Export Co Ltd v Universal Garments International Ltd} (28 November 2017, unreported), the English Court declined to grant summary judgment against a claim to enforce a Chinese judgment, where there was insufficient evidence of Chinese law and procedure to enable the English Court to decide whether the defendant had voluntarily appeared in the Chinese court.

\textsuperscript{219} See s. 33(1) of the Civil Jurisdiction and Judgments Act 1982.


\textsuperscript{221} In \textit{Desert Sun Loan Corp v Hill} [1996] 2 All ER 847, the Court of Appeal accepted that in principle a defendant who appears before a foreign court to argue that it has no jurisdiction over him might be estopped from challenging that court’s decision that it does have jurisdiction. This is hard to square with s. 33(1)(a) of the Civil Jurisdiction and Judgments Act 1982: see further \textit{Dicey, Morris & Collins}, §14-035.

\textsuperscript{222} \textit{Certain Underwriters at Lloyd’s London v Syria} [2018] EWHC 385 (Comm). The claimants accepted that even with this judgment in their favour, separate issues might later arise about Syria’s sovereign immunity from enforcement. On state immunity, see §17 above.

\textsuperscript{223} s. 32 of the Civil Jurisdiction and Judgments Act 1982.

\textsuperscript{224} It may be otherwise where the defendant has made, and lost, the argument before another court of his choosing: see \textit{House of Spring Gardens Ltd v Waite} [1991] 1 QB 241, [1990] 2 All ER 990.

\textsuperscript{225} In relation to which the Human Rights Act 1998 may be relevant. cf. \textit{Government of the United States of America v Montgomery (No. 2)} [2004] UKHL 37, [2004] 1 WLR 2241.
the judgment which the creditor seeks to enforce. Nothing else will do: the merits of the foreign judgment are not reviewable.

§ 25 Procedure

There are important differences in procedure between the three groups of rules described above.

In relation to Regulation 1215/2012, all that must be done is provide the English Court with a copy of the court of origin’s judgment along with a certificate from it certifying that it is enforceable (and, where applicable, a translation of the certificate (rather than necessarily the judgment) into English will also be required).226 The certificate and (provided the judgment debtor has not been served with it already) the judgment (and translation if applicable) must be served on the judgment debtor. Prior to that, and for a reasonable period afterwards, no enforcement steps – as opposed to protective steps – can be taken.227 There is no time limit for the judgment debtor to apply for refusal of enforcement but in practice he will wish to make the application promptly.

For claims under the two Acts, registration is applied for without notice to the other party and following registration, notice is served upon the defendant. An application for registration must be made (in the case of the 1920 Act) within 12 months of the judgment, extendable by the Court,228 or (in the case of the 1933 Act) within 6 years of the judgment or final disposal of any appeal.229 Thereafter the foreign judgment takes effect as if it were a judgment of the English Court and execution can follow. If the foreign judgment is one to which the 1933 Act applies, no action can be brought upon the judgment at common law.230

226 See Regulation 1215/2012, Article 53; CPR Part 74 (Enforcement of Judgments in Different Jurisdictions), r. 74.4A; Regulation 1215/2012, Article 42.
227 Regulation 1215/2012, Article 43 and Recital (32).
228 sub-s. 9(1) of the Administration of Justice Act 1920.
229 s. 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933.
230 s. 6 of the 1933 Act.
In relation to the common law rules, the judgment creditor issues and files a claim form (seeking an English judgment to the same effect as the foreign judgment) along with a draft order and evidence. The claim form and accompanying documents must then be served on the respondent. Assuming the judgment debtor is out of the jurisdiction, permission would also have to be sought to serve the issued claim form out of the jurisdiction. Following service, the judgment debtor would be given a set period within which to acknowledge service and to indicate whether it intends to dispute jurisdiction or defend the claim. Following the respondent acknowledging service/filing a defence – and assuming there is no challenge to the English Court’s jurisdiction (which would be dealt with at a separate hearing) – an application for summary judgment in respect of the claim for enforcement can be made which would be served on the judgment debtor. The application for summary judgment would then be heard by the Court. If successful, an order for enforcement would be granted and the judgment creditor can proceed to execution. If the application for summary judgment was unsuccessful, the Court would then give directions for the exchange of pleadings, evidence etc. for a full contested hearing.

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232 This is an expedited procedure under the CPR Part 24 reserved for cases which do not need to go to full trial. It is preferable to obtaining judgment in default (under CPR Part 12) in circumstances where the English judgment may need to be enforced in other jurisdictions since the latter is essentially administrative and involves no examination of the merits.

233 The court may also order the claimant to pay money into court as a condition of proceeding with the enforcement action. For example, in *Ningbo Jaingdongjiemao Import & Export Co Ltd v Universal Garments International Ltd* (28 November 2017, unreported), the court could not grant summary judgment to the defendant in light of a lack of evidence about the Chinese proceedings, but, given the significant concerns raised by the defendant, it ordered the Chinese claimant to pay £100,000 into court, unless the claimant was able to show that it was unable to comply with this condition.
IV. CONCLUDING REMARKS

The English law on enforcement of foreign arbitral awards and foreign judgments is a complex amalgam of treaty, European law (for now), enabling statute and common law.

In relation to the enforcement of foreign arbitral awards in England, three points stand out. First, the overarching theme is pro-enforcement unless the structural integrity of the arbitral procedure has been seriously undermined. Secondly, where the foreign supervisory court has set aside the award, the English Court is unlikely to enforce it, notwithstanding the international character of the award. Thirdly, ‘Brexit’ does not appear to pose an existential threat to enforcement or to UK arbitration more generally. Indeed, the proposals set out by the Law Commission of England and Wales during the Consultation for the Thirteenth Programme of Law Reform in relation to the English Arbitration Act were restricted to “small changes [that] could make a difference”\(^\text{234}\) in order to “have a subtle but positive impact on London’s attractiveness as an arbitration venue”.\(^\text{235}\) But even this limited ambition has been delayed; reform of the Act was not included in the Thirteenth Programme, published on 14 December 2017, although there remains the possibility that it will be added during the course of the Programme.

With regard to the enforcement of foreign judgments, the effect in England of European law is significant and – for as long as the United Kingdom remains part of the EU (and perhaps a while longer) – the Brussels I regime allows for the swift enforcement of Member State judgments. In contrast, recognition of judgments from certain important non-Member State countries, including the United States and Russia, are subject to the common law rules. The Hague Convention on Choice of Court Agreements may in time create a regime for the enforcement of foreign judgments comparable to the New York Convention and may gain a


special significance for UK-EU enforcement if the ‘Brexit’ negotiations fail to result in a bespoke agreement, but not as yet.

Finally, successful satisfaction of a foreign arbitral award or judgment may depend in significant part on the steps taken post-enforcement to identify and secure assets against which execution can be levied. To that end, the English Court has developed a robust set of domestic powers to assist with enforcement including information-provision orders, freezing orders and receivership orders in aid of execution. The scope of these powers, and how they operate against foreign parties, can give rise to considerable complexity and is beyond the scope of this guide.
Arbitration Act 1996

1996 CHAPTER 23

An Act to restate and improve the law relating to arbitration pursuant to an arbitration agreement; to make other provision relating to arbitration and arbitration awards; and for connected purposes.

[17th June 1996]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Annotations:

Extent Information
E1 This Act extends to England, Wales and Northern Ireland; for exceptions see s.108

Modifications etc. (not altering text)
C1 Act modified (11.11.1999) by 1999 c. 31, s. 8(1)(2) (with application as mentioned in s. 10(2)(3))
C2 Act excluded (31.1.1997) by 1996 c. 41, s. 3 (as substituted by 1996 c. 23, s. 107(1), Sch. 3 para. 24 (with s. 81(2)); S.I. 1996/3146, art. 3 (with transitional provisions in art. 4, Sch. 2)
Act excluded (1.8.1998) by 1992 c. 52, s. 212A(6) (as inserted (1.8.1998) by 1998 c. 8, s. 7; S.I. 1998/1658, Sch. 1, Sch. 1
Act excluded (N.I.) (1.3.1999) by S.I. 1998/3162 (N.I. 21), art. 89(6); S.R. 1999/81, art. 3
C3 Power to apply conferred (11.9.1996 for certain purposes and otherwise 1.5.1998) by 1996 c. 53, s. 108(6); S.I. 1996/2352, art. 2(2); S. I. 1998/650, art. 2
C5 Act applied (W.) (9.2.2004) by The Vehicular Access Across Common and Other Land (Wales) Regulations 2004 (S.I. 2004/248), regs. 1, 12(3)(b)
C6 Act excluded (31.3.2005) by The Dairy Produce Quotas Regulations 2005 (S.I. 2005/465), regs. 10(2), 11, 12(3), 39(4), Sch. 1 para. 34
PART I

ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

Annotations:

Modifications etc. (not altering text)

C7 Act excluded (W.) (31.3.2005) by The Dairy Produce Quotas (Wales) Regulations 2005 (S.I. 2005/537), regs. 10(2), 11, 12(3), 39(4), Sch. 1 para. 34

C8 Act applied (W.) (13.1.2006) by The Tir Cynnal (Wales) Regulations 2006 (S.I. 2006/41), reg. 13(3)


C12 Act applied (N.I.) (14.2.2016) by The Animal Feed (Hygiene, Sampling etc. and Enforcement) Regulations (Northern Ireland) 2016 (S.R. 2016/5), reg. 28(7)

C13 Act applied (E.W.) (10.8.2016) by The York Potash Harbour Facilities Order 2016 (S.I. 2016/772), Sch. 10 para. 21(7) (with arts. 35, 36)

C14 Act applied (20.5.2018) by The Motorcycles (Type-Approval) Regulations 2018 (S.I. 2018/235), Sch. 1 para. 13(2)(a) (with reg. 1(c), Sch. 1 paras. 16, 17)

C15 Act applied (20.5.2018) by The Agricultural and Forestry Vehicles (Type-Approval) Regulations 2018 (S.I. 2018/236), Sch. 1 para. 13(2)(a) (with reg. 1(c), Sch. 1 paras. 16, 17)
Pt. I excluded (E.W.) (2.7.2001) by 2000 c. 19, s. 68, Sch. 7 para. 10(8) (with s. 83(6)); S.I. 2001/1252, art. 2(2)(a)(i)

Pt. I excluded (22.2.2005 for specified purposes and otherwise 6.4.2005) by Pensions Appeal Tribunals Act 1943 (c. 39), s. 6D(8) (as inserted by Armed Forces (Pensions and Compensation) Act 2004 (c. 32), ss. 5, 8, Sch. 1 para. 4); S.I. 2005/356, art. 2, {Sch. 1, 2}

C21 Pt. I excluded (N.I.) (1.3.2005 for specified purposes and otherwise 1.4.2005) by Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)), art. 44(4); S.R. 2005/44, arts. 2, 3, Schs. 1, 2 (subject to arts. 4-13)

Pt. I excluded (N.I.) (1.9.2005) by The Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1)), art. 23(4) (as substituted by The Special Educational Needs and Disability (Northern Ireland) Order 2005 (S.I. 2005/1117 (N.I. 6)), Sch. 5 para. 7(4); S.R. 2005/336, art. 2, Sch.)

C25 Pt. I: power to exclude or restrict conferred (19.9.2007) by virtue of Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 22, 148, Sch. 5 para. 14; S.I. 2007/2709, art. 2(i)

C26 Pt. I excluded (3.11.2008) by The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (S.I. 2008/2685), rule 3(2)

C27 Pt. I excluded (3.11.2008) by The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008 (S.I. 2008/2686), rule 3(2)

C28 Pt. I excluded (3.11.2008) by The Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698), rule 3(2)

C29 Pt. I excluded (3.11.2008) by The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (S.I. 2008/2699), rule 3(2)

C30 Pt. I excluded (1.4.2009) by The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273), rule 3(2)

C31 Pt. I excluded (1.9.2009) by The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976), rule 3(2)

C32 Pt. I excluded (4.8.2010 for specified purposes and otherwise 1.10.2010) by Equality Act 2010 (c. 15), ss. 116(3), 216(3), Sch. 17 para. 6(6); S.I. 2010/1736, art. 2, Sch.; S.I. 2010/1966, art. 2; S.I. 2010/2317, art. 2(9)(k)(ii) (with art. 15)

C33 Pt. I excluded (1.7.2013) by The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013/1169), art. 1(1) rule 4(2) (with art. 2)

Introductory

1 General principles.

The provisions of this Part are founded on the following principles, and shall be construed accordingly—

(a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;

(b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

(c) in matters governed by this Part the court should not intervene except as provided by this Part.
2 Scope of application of provisions.

(1) The provisions of this Part apply where the seat of the arbitration is in England and Wales or Northern Ireland.

(2) The following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
   (a) sections 9 to 11 (stay of legal proceedings, &c.), and
   (b) section 66 (enforcement of arbitral awards).

(3) The powers conferred by the following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
   (a) section 43 (securing the attendance of witnesses), and
   (b) section 44 (court powers exercisable in support of arbitral proceedings); but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or Northern Ireland, or that when designated or determined the seat is likely to be outside England and Wales or Northern Ireland, makes it inappropriate to do so.

(4) The court may exercise a power conferred by any provision of this Part not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where—
   (a) no seat of the arbitration has been designated or determined, and
   (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so.

(5) Section 7 (separability of arbitration agreement) and section 8 (death of a party) apply where the law applicable to the arbitration agreement is the law of England and Wales or Northern Ireland even if the seat of the arbitration is outside England and Wales or Northern Ireland or has not been designated or determined.

3 The seat of the arbitration.

In this Part “the seat of the arbitration” means the juridical seat of the arbitration designated—
   (a) by the parties to the arbitration agreement, or
   (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or
   (c) by the arbitral tribunal if so authorised by the parties, or determined, in the absence of any such designation, having regard to the parties’ agreement and all the relevant circumstances.

4 Mandatory and non-mandatory provisions.

(1) The mandatory provisions of this Part are listed in Schedule 1 and have effect notwithstanding any agreement to the contrary.

(2) The other provisions of this Part (the “non-mandatory provisions”) allow the parties to make their own arrangements by agreement but provide rules which apply in the absence of such agreement.

(3) The parties may make such arrangements by agreeing to the application of institutional rules or providing any other means by which a matter may be decided.
(4) It is immaterial whether or not the law applicable to the parties’ agreement is the law of England and Wales or, as the case may be, Northern Ireland.

(5) The choice of a law other than the law of England and Wales or Northern Ireland as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part is equivalent to an agreement making provision about that matter.

For this purpose an applicable law determined in accordance with the parties’ agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.

5 Agreements to be in writing.

(1) The provisions of this Part apply only where the arbitration agreement is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing.

The expressions “agreement”, “agree” and “agreed” shall be construed accordingly.

(2) There is an agreement in writing—

(a) if the agreement is made in writing (whether or not it is signed by the parties),
(b) if the agreement is made by exchange of communications in writing, or
(c) if the agreement is evidenced in writing.

(3) Where parties agree otherwise than in writing by reference to terms which are in writing, they make an agreement in writing.

(4) An agreement is evidenced in writing if an agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.

(5) An exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and not denied by the other party in his response constitutes as between those parties an agreement in writing to the effect alleged.

(6) References in this Part to anything being written or in writing include its being recorded by any means.

The arbitration agreement

6 Definition of arbitration agreement.

(1) In this Part an “arbitration agreement” means an agreement to submit to arbitration present or future disputes (whether they are contractual or not).

(2) The reference in an agreement to a written form of arbitration clause or to a document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

7 Separability of arbitration agreement.

Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be
regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

8 Whether agreement discharged by death of a party.

(1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.

(2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.

Stay of legal proceedings

9 Stay of legal proceedings.

(1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.

(2) An application may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures.

(3) An application may not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.

(4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

(5) If the court refuses to stay the legal proceedings, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

10 Reference of interpleader issue to arbitration.

(1) Where in legal proceedings relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief shall direct that the issue be determined in accordance with the agreement unless the circumstances are such that proceedings brought by a claimant in respect of the matter would not be stayed.

(2) Where subsection (1) applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.

11 Retention of security where Admiralty proceedings stayed.

(1) Where Admiralty proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the court granting the stay may, if in those
(5) Unless the tribunal or the court determines otherwise—
   (a) the recoverable costs of the arbitration shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and
   (b) any doubt as to whether costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

(6) The above provisions have effect subject to section 64 (recoverable fees and expenses of arbitrators).

(7) Nothing in this section affects any right of the arbitrators, any expert, legal adviser or assessor appointed by the tribunal, or any arbitral institution, to payment of their fees and expenses.

64 Recoverable fees and expenses of arbitrators.

(1) Unless otherwise agreed by the parties, the recoverable costs of the arbitration shall include in respect of the fees and expenses of the arbitrators only such reasonable fees and expenses as are appropriate in the circumstances.

(2) If there is any question as to what reasonable fees and expenses are appropriate in the circumstances, and the matter is not already before the court on an application under section 63(4), the court may on the application of any party (upon notice to the other parties)—
   (a) determine the matter, or
   (b) order that it be determined by such means and upon such terms as the court may specify.

(3) Subsection (1) has effect subject to any order of the court under section 24(4) or 25(3) (b) (order as to entitlement to fees or expenses in case of removal or resignation of arbitrator).

(4) Nothing in this section affects any right of the arbitrator to payment of his fees and expenses.

65 Power to limit recoverable costs.

(1) Unless otherwise agreed by the parties, the tribunal may direct that the recoverable costs of the arbitration, or of any part of the arbitral proceedings, shall be limited to a specified amount.

(2) Any direction may be made or varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

66 Enforcement of the award.

(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.
(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

The right to raise such an objection may have been lost (see section 73).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

Annotations:

Modifications etc. (not altering text)

C75 S. 66 applied (with modifications) (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3 Sch. para. 159(1) (which amending S.I. was revoked (6.4.2004) by S.I. 2004/753, art. 3 (subject to art. 8))

C76 S. 66 applied (with modifications) (E.W.) (6.4.2003) by The ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 (S.I. 2003/694), art. 2, Sch. para. 111 (which amending S.I. was revoked (1.10.2004) by S.I. 2004/2333, art. 3 (subject to art. 6))

C77 S. 66 applied (with modifications) (E.W.) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), art. 1, Sch. para. 183EW

C78 S. 66 applied (with modifications) (E.W.) (1.10.2004) by The ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/2333), art. 4, Sch. para. 135EW (with art. 6)


C80 S. 66 applied (with modifications) (N.I.) (27.9.2012) by The Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012 (S.R. 2012/301), art. 1, Sch. para. 108

Marginal Citations

M5 1950 c. 27.

67 Challenging the award: substantive jurisdiction.

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court—

(a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or

(b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.
(3) On an application under this section challenging an award of the arbitral tribunal as to its substantive jurisdiction, the court may by order—
   (a) confirm the award,
   (b) vary the award, or
   (c) set aside the award in whole or in part.

(4) The leave of the court is required for any appeal from a decision of the court under this section.

Annotations:

Modifications etc. (not altering text)

C81 S. 67 applied (with modifications) (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, Sch. para. 162(1)
   (which amending S.I. was revoked (6.4.2004) by S.I. 2004/753, art. 3 (subject to art. 8))

C82 S. 67 applied (with modifications) (E.W.) (6.4.2003) by The ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 (S.I. 2003/694), art. 2, Sch. para. 113 (which amending S.I. was revoked (1.10.2004) by S.I. 2004/2333, art. 3 (subject to art. 6))

C83 S. 67 applied (with modifications) (E.W.) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), art. 1, Sch. para. 187EW

C84 S. 67 applied (with modifications) (E.W.) (1.10.2004) by The ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/2333), art. 4, Sch. para. 138EW (with art. 6)

C85 S. 67 applied (with modifications) (N.I.) (21.5.2006) by The Labour Relations Agency (Flexible Working) Arbitration Scheme Order (Northern Ireland) 2006 (S.R. 2006/206), arts. 2, 3, Sch. para. 113

C86 S. 67 applied (with modifications) (N.I.) (27.9.2012) by The Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012 (S.R. 2012/301), art. 1, Sch. para. 110

68 Challenging the award: serious irregularity.

(1) A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award.

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant—
   (a) failure by the tribunal to comply with section 33 (general duty of tribunal);
   (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);
   (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
   (d) failure by the tribunal to deal with all the issues that were put to it;
   (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
   (f) uncertainty or ambiguity as to the effect of the award;
   (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
   (h) failure to comply with the requirements as to the form of the award; or
Appeal on point of law.

(1) Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.

An agreement to dispense with reasons for the tribunal’s award shall be considered an agreement to exclude the court’s jurisdiction under this section.

(2) An appeal shall not be brought under this section except—

(a) with the agreement of all the other parties to the proceedings, or

(b) with the leave of the court.

The right to appeal is also subject to the restrictions in section 70(2) and (3).

(3) Leave to appeal shall be given only if the court is satisfied—

(a) that the determination of the question will substantially affect the rights of one or more of the parties,
(b) that the question is one which the tribunal was asked to determine,
(c) that, on the basis of the findings of fact in the award—
   (i) the decision of the tribunal on the question is obviously wrong, or
   (ii) the question is one of general public importance and the decision of
       the tribunal is at least open to serious doubt, and
(d) that, despite the agreement of the parties to resolve the matter by arbitration,
   it is just and proper in all the circumstances for the court to determine the
   question.

(4) An application for leave to appeal under this section shall identify the question of
    law to be determined and state the grounds on which it is alleged that leave to appeal
    should be granted.

(5) The court shall determine an application for leave to appeal under this section without
    a hearing unless it appears to the court that a hearing is required.

(6) The leave of the court is required for any appeal from a decision of the court under
    this section to grant or refuse leave to appeal.

(7) On an appeal under this section the court may by order—
    (a) confirm the award,
    (b) vary the award,
    (c) remit the award to the tribunal, in whole or in part, for reconsideration in the
        light of the court’s determination, or
    (d) set aside the award in whole or in part.

The court shall not exercise its power to set aside an award, in whole or in part, unless
it is satisfied that it would be inappropriate to remit the matters in question to the
tribunal for reconsideration.

(8) The decision of the court on an appeal under this section shall be treated as a judgment
    of the court for the purposes of a further appeal.

But no such appeal lies without the leave of the court which shall not be given unless
the court considers that the question is one of general importance or is one which for
some other special reason should be considered by the Court of Appeal.

Annotations:

Modifications etc. (not altering text)
C93  S. 69 applied (with modifications) (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, Sch. para. 164(1)
      (which amending S.I. was revoked (6.4.2004) by S.I. 2004/753, art. 3 (subject to art. 8))
C94  S. 69 applied (with modifications) (E.W.) (6.4.2003) by The ACAS (Flexible Working) Arbitration
      Scheme (England and Wales) Order 2003 (S.I. 2003/694), art. 2, Sch. para. 115 (which amending S.I.
      was revoked (1.10.2004) by S.I. 2004/2333, art. 3 (subject to art. 6))
C95  S. 69 applied (with modifications) (E.W.) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain)
      Order 2004 (S.I. 2004/753), art. 1, Sch. para. 200EW
C96  S. 69 applied (with modifications) (E.W.) (1.10.2004) by The ACAS (Flexible Working) Arbitration
      Scheme (Great Britain) Order 2004 (S.I. 2004/2333), art. 4, Sch. para. 151EW (with art. 6)
C97  S. 69 applied (with modifications) (N.I.) (21.5.2006) by The Labour Relations Agency (Flexible
      Working) Arbitration Scheme Order (Northern Ireland) 2006 (S.R. 2006/206), arts. 2, 3, Sch. para. 115
Challenge or appeal: supplementary provisions.

(1) The following provisions apply to an application or appeal under section 67, 68 or 69.

(2) An application or appeal may not be brought if the applicant or appellant has not first exhausted—
   (a) any available arbitral process of appeal or review, and
   (b) any available recourse under section 57 (correction of award or additional award).

(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(4) If on an application or appeal it appears to the court that the award—
   (a) does not contain the tribunal’s reasons, or
   (b) does not set out the tribunal’s reasons in sufficient detail to enable the court properly to consider the application or appeal,

the court may order the tribunal to state the reasons for its award in sufficient detail for that purpose.

(5) Where the court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(6) The court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

The power to order security for costs shall not be exercised on the ground that the applicant or appellant is—
   (a) an individual ordinarily resident outside the United Kingdom, or
   (b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.

(7) The court may order that any money payable under the award shall be brought into court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

(8) The court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (7).

This does not affect the general discretion of the court to grant leave subject to conditions.

Annotations:

Modifications etc. (not altering text)
C99 S. 70 applied (with modifications) (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, Sch. para. 165(1) (which amending S.I. was revoked (6.4.2004) by S.I. 2004/753, art. 3 (subject to art. 9))
71 Challenge or appeal: effect of order of court.

(1) The following provisions have effect where the court makes an order under section 67, 68 or 69 with respect to an award.

(2) Where the award is varied, the variation has effect as part of the tribunal’s award.

(3) Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.

(4) Where the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.

Annotations:

Modifications etc. (not altering text)

C105 S. 71 applied (with modifications) (E.W.) (21.5.2001) by S.I. 2001/1185, arts. 2, 3, Sch. para. 167(1) (which amending S.I. was revoked (6.4.2004) by S.I. 2004/753, art. 3 (subject to art. 8))

C106 S. 71 applied (with modifications) (E.W.) (6.4.2003) by The ACAS (Flexible Working) Arbitration Scheme (England and Wales) Order 2003 (S.I. 2003/694), art. 2, Sch. para. 118 (which amending S.I. was revoked (1.10.2004) by S.I. 2004/2333, art. 3 (subject to art. 6))

C107 S. 71 applied (with modifications) (E.W.) (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), art. 1, Sch. para. 212EW

C108 S. 71 applied (with modifications) (E.W.) (1.10.2004) by The ACAS (Flexible Working) Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/2333), art. 4, Sch. para. 163EW (with art. 6)


C110 S. 71 applied (with modifications) (N.I.) (27.9.2012) by The Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012 (S.R. 2012/301), art. 1, Sch. para. 115
Miscellaneous

72 Saving for rights of person who takes no part in proceedings.

(1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question—
   (a) whether there is a valid arbitration agreement,
   (b) whether the tribunal is properly constituted, or
   (c) what matters have been submitted to arbitration in accordance with the arbitration agreement,
   by proceedings in the court for a declaration or injunction or other appropriate relief.

(2) He also has the same right as a party to the arbitral proceedings to challenge an award—
   (a) by an application under section 67 on the ground of lack of substantive jurisdiction in relation to him, or
   (b) by an application under section 68 on the ground of serious irregularity (within the meaning of that section) affecting him;
   and section 70(2) (duty to exhaust arbitral procedures) does not apply in his case.

73 Loss of right to object.

(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection—
   (a) that the tribunal lacks substantive jurisdiction,
   (b) that the proceedings have been improperly conducted,
   (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part, or
   (d) that there has been any other irregularity affecting the tribunal or the proceedings,
   he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling—
   (a) by any available arbitral process of appeal or review, or
   (b) by challenging the award,
   does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, he may not object later to the tribunal’s substantive jurisdiction on any ground which was the subject of that ruling.

74 Immunity of arbitral institutions, &c.

(1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.
(b) section 12 (power of court to extend agreed time limits);
(c) sections 9(5), 10(2) and 71(4) (restrictions on effect of provision that award condition precedent to right to bring legal proceedings).

98 Power to make further provision by regulations.

(1) The Secretary of State may make provision by regulations for adapting or excluding any provision of Part I in relation to statutory arbitrations in general or statutory arbitrations of any particular description.

(2) The power is exercisable whether the enactment concerned is passed or made before or after the commencement of this Act.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART III
RECOGNITION AND ENFORCEMENT OF CERTAIN FOREIGN AWARDS

Enforcement of Geneva Convention awards

99 Continuation of Part II of the Arbitration Act 1950.

Part II of the Arbitration Act 1950 (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that Part which are not also New York Convention awards.

Annotations:

Marginal Citations

M15 1950 c. 27.

Recognition and enforcement of New York Convention awards

100 New York Convention awards.

(1) In this Part a “New York Convention award” means an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention.

(2) For the purposes of subsection (1) and of the provisions of this Part relating to such awards—
(a) “arbitration agreement” means an arbitration agreement in writing, and
(b) an award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties.

In this subsection “agreement in writing” and “seat of the arbitration” have the same meaning as in Part I.
(3) If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact.


101 Recognition and enforcement of awards.

(1) A New York Convention award shall be recognised as binding on the persons as between whom it was made, and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in England and Wales or Northern Ireland.

(2) A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

As to the meaning of “the court” see section 105.

(3) Where leave is so given, judgment may be entered in terms of the award.

102 Evidence to be produced by party seeking recognition or enforcement.

(1) A party seeking the recognition or enforcement of a New York Convention award must produce—

(a) the duly authenticated original award or a duly certified copy of it, and

(b) the original arbitration agreement or a duly certified copy of it.

(2) If the award or agreement is in a foreign language, the party must also produce a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

103 Refusal of recognition or enforcement.

(1) Recognition or enforcement of a New York Convention award shall not be refused except in the following cases.

(2) Recognition or enforcement of the award may be refused if the person against whom it is invoked proves—

(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;

(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;

(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration (but see subsection (4));
(e) that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place;

(f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Recognition or enforcement of the award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to recognise or enforce the award.

(4) An award which contains decisions on matters not submitted to arbitration may be recognised or enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of the award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the recognition or enforcement of the award.

It may also on the application of the party claiming recognition or enforcement of the award order the other party to give suitable security.

104 Saving for other bases of recognition or enforcement.

Nothing in the preceding provisions of this Part affects any right to rely upon or enforce a New York Convention award at common law or under section 66.

PART IV

GENERAL PROVISIONS

105 Meaning of “the court”: jurisdiction of High Court and county court.

(1) In this Act “the court” \[^{F8}\] in relation to England and Wales means the High Court or the county court and in relation to Northern Ireland \[^{F10}\] means the High Court or a county court, subject to the following provisions.

(2) The Lord Chancellor may by order make provision—

\[^{F9}\](za) allocating proceedings under this Act in England and Wales to the High Court or the county court;

(a) allocating proceedings under this Act in Northern Ireland \[^{F10}\] to the High Court or to county courts; or

(b) specifying proceedings under this Act which may be commenced or taken only in the High Court or in \[^{F11}\] the county court or (as the case may be) \[^{F11}\] a county court.

(3) The Lord Chancellor may by order make provision requiring proceedings of any specified description under this Act in relation to which a county court \[^{F12}\] in Northern Ireland \[^{F12}\] has jurisdiction to be commenced or taken in one or more specified county courts.
APPENDIX B
UNITED NATIONS CONFERENCE
ON INTERNATIONAL COMMERCIAL ARBITRATION

CONVENTION
ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS

UNITED NATIONS
1958
CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforce-
ment shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive
any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII
1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX
1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X
1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI
In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting
State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

**Article XII**

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninety-first day after deposit by such State of its instrument of ratification or accession.

**Article XIII**

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

**Article XIV**

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

**Article XV**

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

**Article XVI**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.
I hereby certify that the foregoing text is a true copy of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, the original of which is deposited with the Secretary-General of the United Nations, as the said Convention was opened for signature, and that it includes the necessary rectifications of typographical errors, as approved by the Parties.

For the Secretary-General,
The Legal Counsel:

Carl-August Fleischhauer

United Nations, New York
6 July 1988

Je certifie que le texte qui précède est une copie conforme de la Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères, conclue à New York le 10 juin 1958 et dont l'original se trouve déposé auprès du Secrétaire général de l'Organisation des Nations Unies telle que ladite Convention a été ouverte à la signature, et que les rectifications matérielles nécessaires, telles qu'approvées par les Parties, y ont été incorporées.

Pour le Secrétaire général,
Le Conseiller juridique :

Organisation des Nations Unies
New York, le 6 juillet 1988
APPENDIX C
United Kingdom of Great Britain and Northern Ireland

United States of America 17 March 2015

Parties: 3


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Venezuela (Bolivarian Republic of) \textsuperscript{a,c} 8 February 1995\textsuperscript{(*)} 9 May 1995
Viet Nam \textsuperscript{a,b,c} 12 September 1995\textsuperscript{(*)} 11 December 1995
Zambia 14 March 2002\textsuperscript{(**)} 12 June 2002
Zimbabwe 29 September 1994\textsuperscript{(*)} 28 December 1994

**Parties:** 157

**Declarations or other notifications pursuant to article I(3) and article X(1)**

\textsuperscript{a} This State will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting State.

\textsuperscript{b} With regard to awards made in the territory of non-contracting States, this State will apply the Convention only to the extent to which those States grant reciprocal treatment.

\textsuperscript{c} This State will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law.

\textsuperscript{d} Canada declared that it would apply the Convention only to the extent to which those States grant reciprocal treatment.

\textsuperscript{e} This State will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the laws of Canada, except in the case of the Province of Quebec, where the law did not provide for such limitation.

\textsuperscript{f} On 24 April 1964, the Netherlands declared that the Convention shall apply to the Netherlands Antilles.

\textsuperscript{g} On 10 February 1976, Denmark declared that the Convention shall apply to the Faroe Islands and Greenland.

\textsuperscript{h} On 24 February 2014, the United Kingdom submitted a notification to extend territorial application of the Convention to the British Virgin Islands. For the following territories, the United Kingdom has submitted notifications extending territorial application and declaring that the Convention shall apply only to the recognition and enforcement of awards made in the territory of another Contracting State: Gibraltar (24 September 1975), Isle of Man (22 February 1979), Bermuda (28 November 1980), Guernsey (19 April 1985), Bailiwick of Jersey (28 May 2002).

\textsuperscript{i} Canada declared that it would apply the Convention only to differences arising out of legal relationships, whether contractual or not, that were considered commercial under the laws of Canada, except in the case of the Province of Quebec, where the law did not provide for such limitation.

\textsuperscript{j} On 24 April 1964, the Netherlands declared that the Convention shall apply to the Netherlands Antilles.

\textsuperscript{k} On 10 February 1976, Denmark declared that the Convention shall apply to the Faroe Islands and Greenland.

\textsuperscript{l} On 24 February 2014, the United Kingdom submitted a notification to extend territorial application of the Convention to the British Virgin Islands. For the following territories, the United Kingdom has submitted notifications extending territorial application and declaring that the Convention shall apply only to the recognition and enforcement of awards made in the territory of another Contracting State: Gibraltar (24 September 1975), Isle of Man (22 February 1979), Bermuda (28 November 1980), Guernsey (19 April 1985), Bailiwick of Jersey (28 May 2002).

\textsuperscript{m} Upon resumption of sovereignty over Hong Kong on 1 July 1997, the Government of China extended the territorial application of the Convention to Hong Kong, Special Administrative Region of China, subject to the statement originally made by China upon accession to the Convention. On 19 July 2005, China declared that the Convention shall apply to the Macao Special Administrative Region of China, subject to the statement originally made by China upon accession to the Convention.

**Reservations or other notifications**

\textsuperscript{i} This State formulated a reservation with regards to retroactive application of the Convention.

\textsuperscript{j} This State formulated a reservation with regards to the application of the Convention in cases concerning immovable property.

### II. Enactments of model laws\textsuperscript{28}


8. Legislation based on the Model Law has been adopted in 74 States in a total of 105 jurisdictions:

Armenia (2006); Australia (2010\textsuperscript{a}), in Australian Capital Territory (2017\textsuperscript{a}), New South Wales (2010\textsuperscript{a}), Northern Territory (2011\textsuperscript{a}), Queensland (2013\textsuperscript{a}), South Australia (2011\textsuperscript{a}), Tasmania (2011\textsuperscript{a}), Victoria (2011\textsuperscript{a}), and Western Australia

\textsuperscript{28} Since States enacting legislation based upon a model law have the flexibility to depart from the text, these lists are only indicative of the enactments that were made known to the UNCITRAL Secretariat. The legislation of each State should be considered in order to identify the exact nature of any possible deviation from the model in the legislative text that was adopted. The year of enactment provided in this note is the year the legislation was passed by the relevant legislative body, as indicated to the UNCITRAL Secretariat; it does not address the date of entry into force of that piece of legislation, the procedures for which vary from State to State, and could result in entry into force some time after enactment. In addition, there may be subsequent amending or repealing legislation that has not been made known to the UNCITRAL Secretariat.
APPENDIX D
Section 4
The Award

Article 48

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

Article 49

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

Section 5
Interpretation, Revision and Annulment of the Award

Article 50

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The
Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51

(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant’s ignorance of that fact was not due to negligence.

(2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Article 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

(a) that the Tribunal was not properly constituted;
(b) that the Tribunal has manifestly exceeded its powers;
(c) that there was corruption on the part of a member of the Tribunal;
(d) that there has been a serious departure from a fundamental rule of procedure; or
(e) that the award has failed to state the reasons on which it is based.

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an ad hoc Committee of three persons. None of the members of the Committee shall have been a member of...
the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).

(4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply mutatis mutandis to proceedings before the Committee.

(5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

Section 6
Recognition and Enforcement of the Award

Article 53

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, “award” shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.
(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

Article 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

Chapter V
Replacement and Disqualification of Conciliators and Arbitrators

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification
(Legislative acts)

REGULATIONS

REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2012
on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 67(4) and points (a), (c) and (e) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

Acting in accordance with the ordinary legislative procedure (2),

Whereas:

(1) On 21 April 2009, the Commission adopted a report on the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (3). The report concluded that, in general, the operation of that Regulation is satisfactory, but that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments and to further enhance access to justice. Since a number of amendments are to be made to that Regulation it should, in the interests of clarity, be recast.

(2) At its meeting in Brussels on 10 and 11 December 2009, the European Council adopted a new multiannual programme entitled 'The Stockholm Programme – an open and secure Europe serving and protecting citizens' (4). In the Stockholm Programme the European Council considered that the process of abolishing all intermediate measures (the exequatur) should be continued during the period covered by that Programme. At the same time the abolition of the exequatur should also be accompanied by a series of safeguards.

(3) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(4) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.

(5) Such provisions fall within the area of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU).

(1) OJ C 218, 23.7.2011, p. 78.
In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.

On 27 September 1968, the then Member States of the European Communities, acting under Article 220, fourth indent, of the Treaty establishing the European Economic Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, subsequently amended by conventions on the accession to that Convention of new Member States (1) ('the 1968 Brussels Convention').

On 16 September 1988, the then Member States of the European Communities and certain EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (2) ('the 1988 Lugano Convention'), which is a parallel convention to the 1968 Brussels Convention. The 1988 Lugano Convention became applicable to Poland on 1 February 2000.

On 22 December 2000, the Council adopted Regulation (EC) No 44/2001, which replaces the 1968 Brussels Convention with regard to the territories of the Member States covered by the TFEU, as between the Member States except Denmark. On 12 January 2006, the Council adopted Decision 2006/325/EC (3), by which the Community concluded an agreement with Denmark ensuring the application of the provisions of Regulation (EC) No 44/2001 in Denmark. The 1988 Lugano Convention was revised by the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (4), signed at Lugano on 30 October 2007 by the Community, Denmark, Iceland, Norway and Switzerland ('the 2007 Lugano Convention').

The 1968 Brussels Convention continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, in particular maintenance obligations, which should be excluded from the scope of this Regulation following the adoption of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (5).

For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice when it exercises jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.

This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ('the 1958 New York Convention'), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

(3) OJ L 120, 5.5.2006, p. 22.
There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.

A defendant not domiciled in a Member State should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised.

However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.

The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

The owner of a cultural object as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (1) should be able under this Regulation to initiate proceedings as regards a civil claim for the recovery, based on ownership, of such a cultural object in the courts for the place where the cultural object is situated at the time the court is seised. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.

In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.

The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.

Where a question arises as to whether a choice-of-court agreement in favour of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement, including the conflict-of-laws rules of that Member State.

In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irremovable judgments will not be given in different Member States. There should be a clear and effective mechanism for resolving cases of lis pendens and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.

However, in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general lis pendens rule in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings.

(1) OJ L 74, 27.3.1993, p. 74.
This exception should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised first. In such cases, the general lis pendens rule of this Regulation should apply.

(23) This Regulation should provide for a flexible mechanism allowing the courts of the Member States to take into account proceedings pending before the courts of third States, considering in particular whether a judgment of a third State will be capable of recognition and enforcement in the Member State concerned under the law of that Member State and the proper administration of justice.

(24) When taking into account the proper administration of justice, the court of the Member State concerned should assess all the circumstances of the case before it. Such circumstances may include connections between the facts of the case and the parties and the third State concerned, the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.

That assessment may also include consideration of the question whether the court of the third State has exclusive jurisdiction in the particular case in circumstances where a court of a Member State would have exclusive jurisdiction.

(25) The notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (1). It should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (2).

(26) Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.

(27) For the purposes of the free circulation of judgments, a judgment given in a Member State should be recognised and enforced in another Member State even if it is given against a person not domiciled in a Member State.

(28) Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.

(29) The direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition or enforcement of a judgment if he considers one of the grounds for refusal of recognition to be present. This should include the ground that he had not had the opportunity to arrange for his defence where the judgment was given in default of appearance in a civil action linked to criminal proceedings. It should also include the grounds which could be invoked on the basis of an agreement between the Member State addressed and a third State concluded pursuant to Article 59 of the 1968 Brussels Convention.

(30) A party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law.

The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present.

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Pending a challenge to the enforcement of a judgment, it should be possible for the courts in the Member State addressed, during the entire proceedings relating to such a challenge, including any appeal, to allow the enforcement to proceed subject to a limitation of the enforcement or to the provision of security.

In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service.

Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

Continuity between the 1968 Brussels Convention, Regulation (EC) No 44/2001 and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.

Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.

Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

In order to ensure that the certificates to be used in connection with the recognition or enforcement of judgments, authentic instruments and court settlements under this Regulation are kept up-to-date, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amendments to Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial guaranteed in Article 47 of the Charter.

Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the TEU and to the then Treaty establishing the European Community, took part in the adoption and application of Regulation (EC) No 44/2001. In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (1).

HAVE ADOPTED THIS REGULATION:

CHAPTER I
SCOPE AND DEFINITIONS

Article 1
1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii).

2. This Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(c) social security;

(d) arbitration;

(e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(f) wills and succession, including maintenance obligations arising by reason of death.

Article 2
For the purposes of this Regulation:

(a) ‘judgment’ means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

(b) ‘court settlement’ means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;

(c) ‘authentic instrument’ means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose;

(d) ‘Member State of origin’ means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been formally drawn up or registered;

(e) ‘Member State addressed’ means the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;

(f) ‘court of origin’ means the court which has given the judgment the recognition of which is invoked or in which the enforcement of which is sought.

Article 3
For the purposes of this Regulation, ‘court’ includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

(a) in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző);

(b) in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (Kronofogdemyndigheten).
CHAPTER II

JURISDICTION

SECTION 1

General provisions

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

Article 5

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

Article 6

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

SECTION 2

Special jurisdiction

Article 7

A person domiciled in a Member State may be sued in another Member State:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

2. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

3. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

4. as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

6. as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.
Article 8

A person domiciled in a Member State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

2. as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Member State in which the property is situated.

Article 9

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

SECTION 3

Jurisdiction in matters relating to insurance

Article 10

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11

1. An insurer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled;

(b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or

(c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 12

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 13

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 14

1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen;

2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;

3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State.
(4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or

(5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.

**Article 16**

The following are the risks referred to in point 5 of Article 15:

(1) any loss of or damage to:

(a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;

(b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;

(2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:

(a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;

(b) for loss or damage caused by goods in transit as described in point 1(b);

(3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

(4) any risk or interest connected with any of those referred to in points 1 to 3;


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**SECTION 4**

**Jurisdiction over consumer contracts**

**Article 17**

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

**Article 18**

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

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**Article 19**
The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen;

2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

**SECTION 5**

*Jurisdiction over individual contracts of employment*

**Article 20**
1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

**Article 21**
1. An employer domiciled in a Member State may be sued:

   a) in the courts of the Member State in which he is domiciled; or

   b) in another Member State:

      i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

      ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

**Article 22**
1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

**Article 23**
The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or

2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

**SECTION 6**

*Exclusive jurisdiction*

**Article 24**
The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

1. in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

   However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;
(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;

(5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

SECTION 7
Prorogation of jurisdiction

Article 25
1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing;

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

Article 26
1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.

2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

SECTION 8
Examination as to jurisdiction and admissibility

Article 27
Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.

Article 28
1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.
2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)⁴ shall apply instead of paragraph 2 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

4. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

SECTION 9

Lis pendens — related actions

Article 29

1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.

3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 31

1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

2. Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.

4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.

Article 32

1. For the purposes of this Section, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

⁴ OJ L 324, 10.12.2007, p. 79.
2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.

Article 33

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:

(a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and

(b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

(a) the proceedings in the court of the third State are themselves stayed or discontinued;

(b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or

(c) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Article 34

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if:

(a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and

(c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

(a) it appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;

(b) the proceedings in the court of the third State are themselves stayed or discontinued;

(c) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or

(d) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

SECTION 10

Provisional, including protective, measures

Article 35

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.
CHAPTER III
RECOGNITION AND ENFORCEMENT

SECTION 1
Recognition

Article 36
1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

Article 37
1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53.

2. The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.

Article 38
The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if:

(a) the judgment is challenged in the Member State of origin; or

(b) an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 45 or for a decision that the recognition is to be refused on the basis of one of those grounds.

SECTION 2
Enforcement

Article 39
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 40
An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

Article 41
1. Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed.

2. Notwithstanding paragraph 1, the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in Article 45.

3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 42
1. For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.
2. For the purposes of enforcement in a Member State of a judgment given in another Member State ordering a provisional, including a protective, measure, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

(b) the certificate issued pursuant to Article 53, containing a description of the measure and certifying that:

(i) the court has jurisdiction as to the substance of the matter;

(ii) the judgment is enforceable in the Member State of origin; and

(c) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment.

3. The competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate.

4. The competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

**Article 43**

1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

2. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages:

(a) a language which he understands; or

(b) the official language of the Member State in which he is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he is domiciled.

Where a translation of the judgment is requested under the first subparagraph, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought.

This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages referred to in the first subparagraph or is accompanied by a translation into one of those languages.

3. This Article shall not apply to the enforcement of a protective measure in a judgment or where the person seeking enforcement proceeds to protective measures in accordance with Article 40.

**Article 44**

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

(a) limit the enforcement proceedings to protective measures;

(b) make enforcement conditional on the provision of such security as it shall determine; or

(c) suspend, either wholly or in part, the enforcement proceedings.

2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

**SECTION 3**

**Refusal of recognition and enforcement**

**Subsection 1**

**Refusal of recognition**

**Article 45**

1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment was given in default of appearance, if the defendant was 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, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

Subsection 2

Refusal of enforcement

Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Article 47

1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.

3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 48

The court shall decide on the application for refusal of enforcement without delay.

Article 49

1. The decision on the application for refusal of enforcement may be appealed against by either party.

2. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged.

Article 50

The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

Article 51

1. The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

2. Where the judgment was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.
SECTION 4
Common provisions

Article 52
Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed.

Article 53
The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.

Article 54
1. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests.

Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.

2. Any party may challenge the adaptation of the measure or order before a court.

3. If necessary, the party invoking the judgment or seeking its enforcement may be required to provide a translation or a transliteration of the judgment.

Article 55
A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Article 56
No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State addressed.

Article 57
1. When a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a judgment given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. For the purposes of the forms referred to in Articles 53 and 60, translations or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.

3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

CHAPTER IV
AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 58
1. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed.

The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to authentic instruments.

2. The authentic instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Article 59
A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments.

Article 60
The competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement.

CHAPTER V
GENERAL PROVISIONS

Article 61
No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.
Article 62
1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.

2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 63
1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

(a) statutory seat;

(b) central administration; or

(c) principal place of business.

2. For the purposes of Ireland, Cyprus and the United Kingdom, ‘statutory seat’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 64
Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person: in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Article 65
1. The jurisdiction specified in point 2 of Article 8 and Article 13 in actions on a warranty or guarantee or in any other third-party proceedings may be resorted to in the Member States included in the list established by the Commission pursuant to point (b) of Article 76(1) and Article 76(2) only in so far as permitted under national law. A person domiciled in another Member State may be invited to join the proceedings before the courts of those Member States pursuant to the rules on third-party notice referred to in that list.

2. Judgments given in a Member State by virtue of point 2 of Article 8 or Article 13 shall be recognised and enforced in accordance with Chapter III in any other Member State. Any effects which judgments given in the Member States included in the list referred to in paragraph 1 may have, in accordance with the law of those Member States, on third parties by application of paragraph 1 shall be recognised in all Member States.

3. The Member States included in the list referred to in paragraph 1 shall, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC (1) (the European Judicial Network) provide information on how to determine, in accordance with their national law, the effects of the judgments referred to in the second sentence of paragraph 2.

CHAPTER VI
TRANSITIONAL PROVISIONS

Article 66
1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

CHAPTER VII
RELATIONSHIP WITH OTHER INSTRUMENTS

Article 67
This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.

Article 68
1. This Regulation shall, as between the Member States, supersede the 1968 Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

2. In so far as this Regulation replaces the provisions of the 1968 Brussels Convention between the Member States, any reference to that Convention shall be understood as a reference to this Regulation.

Article 69
Subject to Articles 70 and 71, this Regulation shall, as between the Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions included in the list established by the Commission pursuant to point (c) of Article 76(1) and Article 76(2) shall be superseded.

Article 70
1. The conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.

2. They shall continue to have effect in respect of judgments given, authentic instruments formally drawn up or registered and court settlements approved or concluded before the date of entry into force of Regulation (EC) No 44/2001.

Article 71
1. This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

(a) this Regulation shall not prevent a court of a Member State which is party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not party to that convention. The court hearing the action shall, in any event, apply Article 28 of this Regulation;

(b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation on recognition and enforcement of judgments may be applied.

Article 72
This Regulation shall not affect agreements by which Member States, prior to the entry into force of Regulation (EC) No 44/2001, undertook pursuant to Article 59 of the 1968 Brussels Convention not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 73
1. This Regulation shall not affect the application of the 2007 Lugano Convention.

2. This Regulation shall not affect the application of the 1958 New York Convention.

3. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

CHAPTER VIII
FINAL PROVISIONS

Article 74
The Member States shall provide, within the framework of the European Judicial Network and with a view to making the information available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, and information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

The Member States shall keep this information permanently updated.
Article 75
By 10 January 2014, the Member States shall communicate to the Commission:

(a) the courts to which the application for refusal of enforcement is to be submitted pursuant to Article 47(1);

(b) the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to Article 49(2);

(c) the courts with which any further appeal is to be lodged pursuant to Article 50; and

(d) the languages accepted for translations of the forms as referred to in Article 57(2).

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network.

Article 76
1. The Member States shall notify the Commission of:

(a) the rules of jurisdiction referred to in Articles 5(2) and 6(2);

(b) the rules on third-party notice referred to in Article 65; and

(c) the conventions referred to in Article 69.

2. The Commission shall, on the basis of the notifications by the Member States referred to in paragraph 1, establish the corresponding lists.

3. The Member States shall notify the Commission of any subsequent amendments required to be made to those lists. The Commission shall amend those lists accordingly.

4. The Commission shall publish the lists and any subsequent amendments made to them in the Official Journal of the European Union.

5. The Commission shall make all information notified pursuant to paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network.

Article 77
The Commission shall be empowered to adopt delegated acts in accordance with Article 78 concerning the amendment of Annexes I and II.

Article 78
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 77 shall be conferred on the Commission for an indeterminate period of time from 9 January 2013.

3. The delegation of power referred to in Article 77 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 77 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 79
By 11 January 2022 the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation. That report shall include an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State, taking into account the operation of this Regulation and possible developments at international level. Where appropriate, the report shall be accompanied by a proposal for amendment of this Regulation.

Article 80
This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex III.
Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 December 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS
APPENDIX F
Administration of Justice Act 1920

1920 CHAPTER 81 10 and 11 Geo 5

PART II

RECIPROCAL ENFORCEMENT OF JUDGMENTS IN THE UNITED KINGDOM AND IN OTHER PARTS OF HIS MAJESTY’S DOMINIONS

Annotations:

<table>
<thead>
<tr>
<th>Modifications etc. (not altering text)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1 Pt. II excluded by Foreign Judgments (Reciprocal Enforcement) Act 1933 (c. 13), s. 7(1) and S.R. &amp; O. 1933/1073 (Rev. XI, p. 163: 1933 p. 953)</td>
</tr>
<tr>
<td>C2 Pt. II (ss. 9–14) restricted by Protection of Trading Interests Act 1980 (c. 11, SIF 124:1), s. 5</td>
</tr>
<tr>
<td>C3 Pt. II (ss. 9–14) extended by S.I. 1980/701, art. 7, Sch. para. 4(1); extended by S.I. 1984/129, art. 2</td>
</tr>
</tbody>
</table>

9 Enforcement in the United Kingdom of judgments obtained in superior courts in other British dominions.

(1) Where a judgment has been obtained in a superior court in any part of His Majesty’s dominions outside the United Kingdom to which this Part of this Act extends, the judgment creditor may apply to the High Court in England or [\(^{[1]}\)Northern Ireland] or to the Court of Session in Scotland, 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 they think it just and convenient that the judgment should be enforced in the United Kingdom, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if—

(a) the original court acted without jurisdiction; or

(b) 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 appear or otherwise submit or agree to submit to the jurisdiction of that court; or
(c) 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; or

(d) the judgment was obtained by fraud; or

(e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

(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 the registering court.

(3) Where a judgment is registered under this section—

(a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;

(b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;

(c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(4) [\textsuperscript{F2}Rules of court shall provide][\textsuperscript{F2}Rules made under section seven of the \textsuperscript{M1}Northern Ireland Act 1962 shall provide]—

(a) for service on the judgment debtor of notice of the registration of a judgment under this section; and

(b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit; and

(c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

(5) In any action brought in any court in the United Kingdom on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused or unless the court otherwise orders.

Annotations:

Amendments (Textual)

\textsuperscript{F1} Words substituted by virtue of S.R. & O. 1921/1802 (Rev. XVI, p. 954: 1921, p. 1332), art. 2(1)

\textsuperscript{F2} Words from “Rules made” to “provide” substituted (N.I.) for words “Rules of court shall provide” by \textsuperscript{M1}Northern Ireland Act 1962 (c. 30), Sch. 1

Marginal Citations

\textsuperscript{M1} 1962 c.30.
[F310  Issue of certificates of judgments obtained in the United Kingdom.

(1) Where—
   (a) a judgment has been obtained in the High Court in England or Northern
       Ireland, or in the Court of Session in Scotland, against any person; and
   (b) the judgment creditor wishes to secure the enforcement of the judgment in a
       part of Her Majesty’s dominions outside the United Kingdom to which this
       Part of this Act extends,

   the court shall, on an application made by the judgment creditor, issue to him a certified
   copy of the judgment.

(2) The reference in the preceding subsection to Her Majesty’s dominions shall be
    construed as if that subsection had come into force in its present form at the
    commencement of this Act.]

Annotations:

Amendments (Textual)
F3  S. 10 substituted by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), s. 35(2)

[F411  Power to make rules.

[F5Provision may be made by rules of court][F5 Rules may be made under section
   seven of the Northern Ireland Act 1962 providing] for regulating the practice and
   procedure (including scales of fees and evidence), in respect of proceedings of any
   kind under this Part of this Act.]

Annotations:

Amendments (Textual)
F4  S. 11 repealed as it applies to Northern Ireland by Judicature (Northern Ireland) Act 1978 (c. 23), s. 123(2), Sch. 7 Pt. 1
F5  Words from "Rules" to "providing" substituted (N.I.) for words from "provision" to "court"by Northern
     Ireland Act 1962 (c. 30), Sch. 1

Marginal Citations
M2 1962 c. 30

12  Interpretation.

(1) In this Part of this Act, unless the context otherwise requires—

   The expression “judgment” means any judgment or order given or made
   by a court in any civil proceedings, whether before or after the passing of this
   Act, whereby any sum of money is made payable, and includes an award in
   proceedings on an arbitration if the award has, in pursuance of the law in force
   in the place where it was made, become enforceable in the same manner as a
   judgment given by a court in that place:

   The expression “original court” in relation to any judgment means the court
   by which the judgment was given:
The expression “registering court” in relation to any judgment means the court by which the judgment was registered:

The expression “judgment creditor” means the person by whom the judgment was obtained, and includes the successors and assigns of that person:

The expression “judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given.

[F6(2) Subject to [F7rules of court],$F7rules made under section seven of the Northern Ireland Act 1962] any of the powers conferred by this Part of this Act on any court may be exercised by a judge of the court.]

Annotations:

Amendments (Textual)
F6 S. 12(2) repealed as it applies to Northern Ireland by Judicature (Northern Ireland) Act 1978 (c. 23), s. 123(2), Sch. 7 Pt. I
F7 Words from “rules” to “1962” substituted (N.I.) for words “rules of court” by Northern Ireland Act 1962 (c. 30), Sch. 1

Marginal Citations
M3 1962 c. 30.

13 **Power to apply Part II. of Act to territories under His Majesty’s protection.**

His Majesty may by Order in Council declare that this Part of this Act shall apply to any territory which is under His Majesty’s protection, or in respect of which a mandate is being exercised by the Government of any part of His Majesty’s dominions, as if that territory were part of His Majesty’s dominions, and on the making of any such Order this Part of this Act shall, subject to the provisions of the Order, have effect accordingly.

14 **Extent of Part II. of Act.**

(1) Where His Majesty is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty’s dominions outside the United Kingdom for the enforcement within that part of His dominions of judgments obtained in the High Court in England, the Court of Session in Scotland, and the High Court in Northern Ireland, His Majesty may by Order in Council declare that this Part of this Act shall extend to that part of His dominions, and on any such Order being made this Part of this Act shall extend accordingly.

(2) An Order in Council under this section may be varied or revoked by a subsequent Order.

[F9(3) Her Majesty may by Order in Council under this section consolidate any Orders in Council under this section which are in force when the consolidating Order is made.]
Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1920, Part II. (See end of Document for details)

Annotations:

Amendments (Textual)

F8 Words substituted by virtue of S.R. & O. 1921/1802 (Rev. XVI, p. 954; 1921, p. 1332), art. 2(1)

F9 S. 14(3) inserted by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), s. 35(3)
APPENDIX G
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Foreign Judgments (Reciprocal Enforcement) Act 1933. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Foreign Judgments (Reciprocal Enforcement) Act 1933

1933 CHAPTER 13 23 and 24 Geo 5

An Act to make provision for the enforcement in the United Kingdom of judgments given in foreign countries which accord reciprocal treatment to judgments given in the United Kingdom, for facilitating the enforcement in foreign countries of judgments given in the United Kingdom, and for other purposes in connection with the matters aforesaid.

[13th April 1933]

Annotations:

Commencement Information

I Act wholly in force at Royal Assent.

PART I

REGISTRATION OF FOREIGN JUDGMENTS

Annotations:

Modifications etc. (not altering text)
C1 Pt. I applied (with modifications) by Carriage of Goods by Road Act 1965 (c. 37), ss. 4, 11(2)
Pt. I applied (with modifications) by Nuclear Installations Act 1965 (c. 57), s. 17(4)
Pt. I applied (with modifications) by Merchant Shipping (Oil Pollution) Act 1971 (c. 59), s. 13(3)
Pt. I applied (with modifications) by Carriage of Passengers by Road Act 1974 (c. 35), s. 5
Pt. I applied (with modifications) by Merchant Shipping Act 1974 (c. 43), ss. 6(4)(5), 24(2)
C2 Pt. I restricted by Protection of Trading Interests Act 1980 (c. 11, SIF 124:1), s. 5
C3 Pt. I extended and modified by International Transport Convention Act 1983 (c. 14, SIF 102), s. 6
C4 Pt. I extended by S.I. 1987/468, arts. 2, 3
C5 Pt. I extended to Australia (with modifications) (1.9.1994) by S.I. 1994/1901, arts. 1, 2
Pt. I extended (with modifications) (temp. from 1.1.1996 to 30.5.1996) by 1995 c. 21, ss. 166(3) (as set out in Sch. 4), 171, 182, 316(2), Sch. 4 (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2
Pt. I extended (with modifications) (30.5.1996) by 1995 c. 21, ss. 166(4), 171, 182, 316(2) (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2
Pt. I extended (with modifications) (temp. from 1.1.1996 to 30.5.1996) by 1995 c. 21, ss. 171, 177(4) (as set out in Sch. 4), 182, 316(2) (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2
Pt. I extended (with modifications) (30.5.1996) by 1995 c. 21, ss. 177(4), 171, 182, 316(2) (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2

Pt. I restricted (with modifications) (temp. from 1.1.1996 to 30.5.1996) by 1995 c. 21, ss. 166(3) (as set out in Sch. 4), 171, 182, 316(2), Sch. 4 (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2
Pt. I restricted (with modifications) (30.5.1996) by 1995 c. 21, ss. 166(4), 171, 182, 316(2) (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2
Pt. I restricted (with modifications) (temp. from 1.1.1996 to 30.5.1996) by 1995 c. 21, ss. 171, 177(4) (as set out in Sch. 4), 182, 316(2) (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2
Pt. I restricted (with modifications) (30.5.1996) by 1995 c. 21, ss. 177(4), 171, 182, 316(2) (with ss. 167(1), 169, 312(1)); S.I. 1996/1210, art. 2

Pt. 1 applied (with modifications) by The Railways (Convention on International Carriage by Rail) Regulations 2005 (S.I. 2005/2092), reg. 8 (the amendment coming into force in accordance with reg. 1 of the amending Regulations)
Pt. 1 applied (with modifications) by 1995 c. 21, s. 166(4) (as inserted (21.11.2008) by The Merchant Shipping (Oil Pollution) (Bunkers Convention) Regulations 2006 (S.I. 2006/1244), regs. 1(2), 20(4) (with reg. 1(5))

1  Power to extend Part I of Act to foreign countries giving reciprocal treatment.

(1) If, in the case of any foreign country, Her Majesty is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to, or to any particular class of, judgments given in the courts of that country or in any particular class of those courts, substantial reciprocity of treatment will be assured as regards the enforcement in that country of similar judgments given in similar courts of the United Kingdom, She may by order in Council direct—
   (a) that this Part of this Act shall extend to that country;
   (b) that such courts of that country as are specified in the Order shall be recognised courts of that country for the purposes of this Part of this Act; and
   (c) that judgments of any such recognised court, or such judgments of any class so specified, shall, if within subsection (2) of this section, be judgments to which this Part of this Act applies.

(2) Subject to subsection (2A) of this section, a judgment of a recognised court is within this subsection if it satisfies the following conditions, namely—
   (a) it is either final and conclusive as between the judgment debtor and the judgment creditor or requires the former to make an interim payment to the latter; 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 of a fine or other penalty; and
   (c) it is given after the coming into force of the Order in Council which made that court a recognised court.

(2A) The following judgments of a recognised court are not within subsection (2) of this section—
   (a) a judgment given by that court on appeal from a court which is not a recognised court;
Application for, and effect of, registration of foreign judgment.

(1) A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply 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 appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that a judgment shall not be registered if at the date of the application—

(a) it has been wholly satisfied; or

(b) it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration—

(a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and

(b) proceedings may be taken on a registered judgment; and
Part I – Registration of Foreign Judgments

(c) the sum for which a judgment is registered shall carry interest; and
(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:

Provided that execution shall not issue on the judgment so long as, under this Part of this Act and the Rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

(3)

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Annotations:

Amendments (Textual)
F3 S. 2(3) repealed by Administration of Justice Act 1977 (c. 38), s. 4(2)(b)(i)(4), Sch. 5 Pt. I

Modifications etc. (not altering text)
C9 S. 2 extended by Isle of Man Act 1979 (c. 58, SIF 29:4), s. 4

3 Rules of court.

(1) The power to make Civil Procedure Rules, shall, subject to the provisions of this section, include power to make rules for the following purposes—

(a) For making provision with respect to the giving of security for costs by persons applying for the registration of judgments;

(b) For prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;

(c) For providing for the service on the judgment debtor of notice of the registration of a judgment;

(d) For making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Foreign Judgments (Reciprocal Enforcement) Act 1933. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(e) For prescribing the method by which any question arising under this Act whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined;

(f) For prescribing any matter which under this Part of this Act is to be prescribed.

(2) Rules made for the purposes of this Part of this Act shall be expressed to have, and shall have, effect subject to any such provisions contained in Orders in Council made under section one of this Act as are declared by the said Orders to be necessary for giving effect to agreements made between His Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part of this Act.

Annotations:

Amendments (Textual)
F4 Words in s. 3(1) substituted (E.W.) (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, Sch. 8 para. 78; S.I. 2005/910, art. 3(y)

Modifications etc. (not altering text)
C10 S. 3 extended by Isle of Man Act 1979 (c. 58, SIF 29:4), s. 4

4  Cases in which registered judgments must, or may, be set aside.

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(a) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the foregoing provisions of this Act; or
(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
(iii) that the judgment debtor, being the defendant in the proceedings in the original court, 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; or
(iv) that the judgment was obtained by fraud; or
(v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering court is satisfied 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.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3) of this section, be deemed to have had jurisdiction—

(a) in the case of a judgment given in an action in personam—
(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings...; or

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or

(iii) if the judgment debtor, being a defendant in the original 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

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business 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;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;

(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—

(a) if the subject matter of the proceedings was immovable property outside the country of the original court; or

(b)...

(c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Annotations:

Amendments (Textual)

F5 Words repealed (with saving) by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 35(1), 53, Sch. 13 Pt. II para. 9(2), Sch. 14

F6 S. 4(3)(b) repealed (with saving) by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 35(1), 53, Sch. 13 Pt. II para. 8(2), Sch. 14

Modifications etc. (not altering text)

C11 S. 4 extended by Isle of Man Act 1979 (c. 58, SIF 29:4), s. 4
5 Powers of registering court on application to set aside registration.

(1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after 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.

(2) Where the registration of a judgment is set aside under the last foregoing subsection, or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

Annotations:

Modifications etc. (not altering text)

C12 S. 5 extended by Isle of Man Act 1979 (c. 58, SIF 29:4), s. 4

6 Foreign judgments which can be registered not to be enforceable otherwise.

No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom.

7 Power to apply Part I of Act to British dominions, protectorates and mandated territories.

(1) His Majesty may by Order in Council direct that this Part of this Act shall apply to His Majesty’s dominions outside the United Kingdom and to judgments obtained in the courts of the said dominions as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of His Majesty so directing, this Act shall have effect accordingly and Part II of the Administration of Justice Act 1920, shall cease to have effect except in relation to those parts of the said dominions to which it extends at the date of the Order.

(2) If at any time after His Majesty has directed as aforesaid an Order in Council is made under section one of this Act extending Part I of this Act to any part of His Majesty’s dominions to which the said Part II extends as aforesaid, the said Part II shall cease to have effect in relation to that part of His Majesty’s dominions.

(3) References in this section to His Majesty’s dominions outside the United Kingdom shall be construed as including references to any territories which are under His
Majesty’s protection and to any territories in respect of which a mandate under the League of Nations has been accepted by His Majesty.

Annotations:

Modifications etc. (not altering text)
C13 S. 7 modified (retrospective to 1.10.1989) by Pakistan Act 1990 (c. 14, SIF 26:30), s. 1, Sch. para. 8

Marginal Citations
M1 1920 c. 81.

PART II
MISCELLANEOUS AND GENERAL

8 General effect of certain foreign judgments.

(1) Subject to the provisions of this section, a judgment to which Part I of this Act applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in the United Kingdom as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment—
   (a) where the judgment has been registered and the registration thereof has been set aside on some ground other than—
      (i) that a sum of money was not payable under the judgment; or
      (ii) that the judgment had been wholly or partly satisfied; or
      (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or
   (b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in the United Kingdom recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act.

9 Power to make foreign judgments unenforceable in United Kingdom if no reciprocity.

(1) If it appears to His Majesty that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the . . . courts of the United Kingdom is substantially less favourable than that accorded by the courts of the United Kingdom to judgments of the . . . courts of that country, His Majesty may by Order in Council apply this section to that country.

(2) Except in so far as His Majesty may by Order in Council under this section otherwise direct, no proceedings shall be entertained in any court in the United Kingdom for
the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

Annotations:

Amendments (Textual)

F7 Word repealed by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 35(1), 54, Sch. 10 para. 2, Sch. 14

10A Provision for issue of copies of, and certificates in connection with, U.K. judgments.

(1) Rules may make provision for enabling any judgment creditor wishing to secure the enforcement in a foreign country to which Part I of this Act extends of a judgment to which this subsection applies, to obtain, subject to any conditions specified in the rules—

(a) a copy of the judgment; and
(b) a certificate giving particulars relating to the judgment and the proceedings in which it was given.

(2) Subsection (1) applies to any judgment given by a court or tribunal in the United Kingdom under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

(3) In this section “rules”—

(a) in relation to judgments given by a court, means rules of court;
(b) in relation to judgments given by any other tribunal, means rules or regulations made by the authority having power to make rules or regulations regulating the procedure of that tribunal.

Annotations:

Amendments (Textual)

F8 S. 10 substituted by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), s. 35(1), Sch. 10 para. 3

10A Arbitration awards.

The provisions of this Act, except sections 1(5) and 6, shall apply, as they apply to a judgment, in relation to an award in proceedings on an arbitration which has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.]
Interpretation.

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“Appeal” includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

“Country of the original court” means the country in which the original court is situated;

“Court”, except in section 10 of this Act, includes a tribunal;

“Judgment” means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

“Judgment creditor” means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

“Judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;

“Original court” in relation to any judgment means the court by which the judgment was given;

“Prescribed” means prescribed by rules of court;

“Registration” means registration under Part I of this Act, and the expressions “register” and “registered” shall be construed accordingly;

“Registering court” in relation to any judgment means the court to which an application to register the judgment is made.

(2) For the purposes of this Act, the expression “action in personam” shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants.
State Immunity Act 1978

1978 CHAPTER 33

PART I

PROCEEDINGS IN UNITED KINGDOM BY OR AGAINST OTHER STATES

Annotations:

Modifications etc. (not altering text)

Immunity from jurisdiction

1 General immunity from jurisdiction.

(1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.

(2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

Exceptions from immunity

2 Submission to jurisdiction.

(1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of the United Kingdom is not to be regarded as a submission.

(3) A State is deemed to have submitted—
   (a) if it has instituted the proceedings; or
(b) subject to subsections (4) and (5) below, if it has intervened or taken any step in the proceedings.

(4) Subsection (3)(b) above does not apply to intervention or any step taken for the purpose only of—
   (a) claiming immunity; or
   (b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.

(5) Subsection (3)(b) above does not apply to any step taken by the State in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(6) A submission in respect of any proceedings extends to any appeal but not to any counter-claim unless it arises out of the same legal relationship or facts as the claim.

(7) The head of a State’s diplomatic mission in the United Kingdom, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State shall be deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

3 Commercial transactions and contracts to be performed in United Kingdom.

(1) A State is not immune as respects proceedings relating to—
   (a) a commercial transaction entered into by the State; or
   (b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the United Kingdom.

(2) This section does not apply if the parties to the dispute are States or have otherwise agreed in writing; and subsection (1)(b) above does not apply if the contract (not being a commercial transaction) was made in the territory of the State concerned and the obligation in question is governed by its administrative law.

(3) In this section “commercial transaction” means—
   (a) any contract for the supply of goods or services;
   (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and
   (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority;

but neither paragraph of subsection (1) above applies to a contract of employment between a State and an individual.

4 Contracts of employment.

(1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in the United Kingdom or the work is to be wholly or partly performed there.

(2) Subject to subsections (3) and (4) below, this section does not apply if—
(a) at the time when the proceedings are brought the individual is a national of the State concerned; or

(b) at the time when the contract was made the individual was neither a national of the United Kingdom nor habitually resident there; or

(c) the parties to the contract have otherwise agreed in writing.

(3) Where the work is for an office, agency or establishment maintained by the State in the United Kingdom for commercial purposes, subsection (2)(a) and (b) above do not exclude the application of this section unless the individual was, at the time when the contract was made, habitually resident in that State.

(4) Subsection (2)(c) above does not exclude the application of this section where the law of the United Kingdom requires the proceedings to be brought before a court of the United Kingdom.

(5) In subsection (2)(b) above “national of the United Kingdom”[F1] means—

(a) a British citizen, a British Dependent Territories citizen [F2] or a British National (Overseas); or

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person (within the meaning of that Act)]

(6) In this section “proceedings relating to a contract of employment” includes proceedings between the parties to such a contract in respect of any statutory rights or duties to which they are entitled or subject as employer or employee.

Annotations:

Amendments (Textual)
F1 Words substituted by British Nationality Act 1981 (c. 61, SIF 87), s. 52(6), Sch. 7
F2 Words inserted by S.I. 1986/948, art. 8, Sch.

5 Personal injuries and damage to property.

A State is not immune as respects proceedings in respect of—

(a) death or personal injury; or

(b) damage to or loss of tangible property,

caused by an act or omission in the United Kingdom.

6 Ownership, possession and use of property.

(1) A State is not immune as respects proceedings relating to—

(a) any interest of the State in, or its possession or use of, immovable property in the United Kingdom; or

(b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects proceedings relating to any interest of the State in movable or immovable property, being an interest arising by way of succession, gift or bona vacantia.

(3) The fact that a State has or claims an interest in any property shall not preclude any court from exercising in respect of it any jurisdiction relating to the estates of deceased
persons or persons of unsound mind or to insolvency, the winding up of companies or the administration of trusts.

(4) A court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property—
   (a) which is in the possession or control of a State; or
   (b) in which a State claims an interest,
   if the State would not have been immune had the proceedings been brought against it or, in a case within paragraph (b) above, if the claim is neither admitted nor supported by prima facie evidence.

7 **Patents, trade-marks etc.**

A State is not immune as respects proceedings relating to—
   (a) any patent, trade-mark, design or plant breeders’ rights belonging to the State and registered or protected in the United Kingdom or for which the State has applied in the United Kingdom;
   (b) an alleged infringement by the State in the United Kingdom of any patent, trade-mark, design, plant breeders’ rights or copyright; or
   (c) the right to use a trade or business name in the United Kingdom.

**Annotations:**

**Modifications etc. (not altering text)**

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<td>C3</td>
<td>S. 7(a)(b) amended (31.10.1994) by 1994 c. 26, s. 106(1), Sch. 4 para. 1(2); S.I. 1994/2550, art. 2</td>
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8 **Membership of bodies corporate etc.**

(1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which—
   (a) has members other than States; and
   (b) is incorporated or constituted under the law of the United Kingdom or is controlled from or has its principal place of business in the United Kingdom, being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

(2) This section does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

9 **Arbitrations.**

(1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of the United Kingdom which relate to the arbitration.

(2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.
10 Ships used for commercial purposes.

(1) This section applies to—
(a) Admiralty proceedings; and
(b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects—
(a) an action in rem against a ship belonging to that State; or
(b) an action in personam for enforcing a claim in connection with such a ship, if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(3) Where an action in rem is brought against a ship belonging to a State for enforcing a claim in connection with another ship belonging to that State, subsection (2)(a) above does not apply as respects the first-mentioned ship unless, at the time when the cause of action relating to the other ship arose, both ships were in use or intended for use for commercial purposes.

(4) A State is not immune as respects—
(a) an action in rem against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or
(b) an action in personam for enforcing a claim in connection with such a cargo if the ship carrying it was then in use or intended for use as aforesaid.

(5) In the foregoing provisions references to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and, subject to subsection (4) above, subsection (2) above applies to property other than a ship as it applies to a ship.

(6) Sections 3 to 5 above do not apply to proceedings of the kind described in subsection (1) above if the State in question is a party to the Brussels Convention and the claim relates to the operation of a ship owned or operated by that State, the carriage of cargo or passengers on any such ship or the carriage of cargo owned by that State on any other ship.

11 Value added tax, customs duties etc.

A State is not immune as respects proceedings relating to its liability for—
(a) value added tax, any duty of customs or excise or any agricultural levy; or
(b) rates in respect of premises occupied by it for commercial purposes.

Annotations:

Modifications etc. (not altering text)
C4 S. 11 modified (E.W.) (19.8.2009 for E.) by Business Rate Supplements Act 2009 (c. 7), ss. 21(5), 32 (with s. 31); S.I. 2009/2202, art. 2
Procedure

12 Service of process and judgments in default of appearance.

(1) Any writ or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State and service shall be deemed to have been effected when the writ or document is received at the Ministry.

(2) Any time for entering an appearance (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the writ or document is received as aforesaid.

(3) A State which appears in proceedings cannot thereafter object that subsection (1) above has not been complied with in the case of those proceedings.

(4) No judgment in default of appearance shall be given against a State except on proof that subsection (1) above has been complied with and that the time for entering an appearance as extended by subsection (2) above has expired.

(5) A copy of any judgment given against a State in default of appearance shall be transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of that State and any time for applying to have the judgment set aside (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the copy of the judgment is received at the Ministry.

(6) Subsection (1) above does not prevent the service of a writ or other document in any manner to which the State has agreed and subsections (2) and (4) above do not apply where service is effected in any such manner.

(7) This section shall not be construed as applying to proceedings against a State by way of counter-claim or to an action in rem; and subsection (1) above shall not be construed as affecting any rules of court whereby leave is required for the service of process outside the jurisdiction.

Annotations:

Modifications etc. (not altering text)

Ss. 12, 13, 14(3)(4) extended by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 31(4), 53, Sch. 13 Pt. II para. 7

13 Other procedural privileges.

(1) No penalty by way of committal or fine shall be imposed in respect of any failure or refusal by or on behalf of a State to disclose or produce any document or other information for the purposes of proceedings to which it is a party.

(2) Subject to subsections (3) and (4) below—
   (a) relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and
   (b) the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale.
(3) Subsection (2) above does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.

(4) Subsection (2)(b) above does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes; but, in a case not falling within section 10 above, this subsection applies to property of a State party to the European Convention on State Immunity only if—
   (a) the process is for enforcing a judgment which is final within the meaning of section 18(1)(b) below and the State has made a declaration under Article 24 of the Convention; or
   (b) the process is for enforcing an arbitration award.

(5) The head of a State’s diplomatic mission in the United Kingdom, or the person for the time being performing his functions, shall be deemed to have authority to give on behalf of the State any such consent as is mentioned in subsection (3) above and, for the purposes of subsection (4) above, his certificate to the effect that any property is not in use or intended for use by or on behalf of the State for commercial purposes shall be accepted as sufficient evidence of that fact unless the contrary is proved.

(6) In the application of this section to Scotland—
   (a) the reference to “injunction” shall be construed as a reference to “interdict”; 
   (b) for paragraph (b) of subsection (2) above there shall be substituted the following paragraph—
      “(b) the property of a State shall not be subject to any diligence for enforcing a judgment or order of a court or a decree arbitral or, in an action in rem, to arrestment or sale.”; and
   (c) any reference to “process” shall be construed as a reference to “diligence”, any reference to “the issue of any process” as a reference to “the doing of diligence” and the reference in subsection (4)(b) above to “an arbitration award” as a reference to “a decree arbitral”.

Annotations:

Modifications etc. (not altering text)
C6 Ss. 12, 13, 14(3)(4) extended by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 31(4), 53, Sch. 13 Pt. II para. 7
C7 S. 13(4) excluded (1.11.1997) by S.I. 1997/2591, arts. 2, 3, Sch.

Supplementary provisions

14 States entitled to immunities and privileges.

   (1) The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to—
      (a) the sovereign or other head of that State in his public capacity;
      (b) the government of that State; and
(c) any department of that government,
but not to any entity (hereafter referred to as a “separate entity”) which is distinct from
the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts of the United Kingdom
if, and only if—
(a) the proceedings relate to anything done by it in the exercise of sovereign
authority; and
(b) the circumstances are such that a State (or, in the case of proceedings to
which section 10 above applies, a State which is not a party to the Brussels
Convention) would have been so immune.

(3) If a separate entity (not being a State’s central bank or other monetary authority)
submits to the jurisdiction in respect of proceedings in the case of which it is entitled
to immunity by virtue of subsection (2) above, subsections (1) to (4) of section 13
above shall apply to it in respect of those proceedings as if references to a State were
references to that entity.

(4) Property of a State’s central bank or other monetary authority shall not be regarded
for the purposes of subsection (4) of section 13 above as in use or intended for use
for commercial purposes; and where any such bank or authority is a separate entity
subsections (1) to (3) of that section shall apply to it as if references to a State were
references to the bank or authority.

(5) Section 12 above applies to proceedings against the constituent territories of a federal
State; and Her Majesty may by Order in Council provide for the other provisions of
this Part of this Act to apply to any such constituent territory specified in the Order
as they apply to a State.

(6) Where the provisions of this Part of this Act do not apply to a constituent territory by
virtue of any such Order subsections (2) and (3) above shall apply to it as if it were
a separate entity.

Annotations:

Modifications etc. (not altering text)
C8 Ss. 12, 13, 14(3)(4) extended by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 45:3), ss. 31(4),
53, Sch. 13 Pt. II para. 7

15 Restriction and extension of immunities and privileges.

(1) If it appears to Her Majesty that the immunities and privileges conferred by this Part
of this Act in relation to any State—
(a) exceed those accorded by the law of that State in relation to the United
Kingdom; or
(b) are less than those required by any treaty, convention or other international
agreement to which that State and the United Kingdom are parties,
Her Majesty may by Order in Council provide for restricting or, as the case may be,
extending those immunities and privileges to such extent as appears to Her Majesty
to be appropriate.
(2) Any statutory instrument containing an Order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

16 Excluded matters.

(1) This Part of this Act does not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968; and—
   (a) section 4 above does not apply to proceedings concerning the employment of the members of a mission within the meaning of the Convention scheduled to the said Act of 1964 or of the members of a consular post within the meaning of the Convention scheduled to the said Act of 1968;
   (b) section 6(1) above does not apply to proceedings concerning a State’s title to or its possession of property used for the purposes of a diplomatic mission.

(2) This Part of this Act does not apply to proceedings relating to anything done by or in relation to the armed forces of a State while present in the United Kingdom and, in particular, has effect subject to the Visiting Forces Act 1952.

(3) This Part of this Act does not apply to proceedings to which section 17(6) of the Nuclear Installations Act 1965 applies.

(4) This Part of this Act does not apply to criminal proceedings.

(5) This Part of this Act does not apply to any proceedings relating to taxation other than those mentioned in section 11 above.

Annotations:

Marginal Citations
M1 1964 c. 81.
M2 1968 c. 18.
M3 1952 c. 67.
M4 1965 c. 57.

17 Interpretation of Part I.

(1) In this Part of this Act—
   “the Brussels Convention” means the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships signed in Brussels on 10th April 1926;
   “commercial purposes” means purposes of such transactions or activities as are mentioned in section 3(3) above;
   “ship” includes hovercraft.

(2) In sections 2(2) and 13(3) above references to an agreement include references to a treaty, convention or other international agreement.

(3) For the purposes of sections 3 to 8 above the territory of the United Kingdom shall be deemed to include any dependent territory in respect of which the United Kingdom is a party to the European Convention on State Immunity.
(4) In sections 3(1), 4(1), 5 and 16(2) above references to the United Kingdom include references to its territorial waters and any area designated under section 1(7) of the Continental Shelf Act 1964.

(5) In relation to Scotland in this Part of this Act “action in rem” means such an action only in relation to Admiralty proceedings.

Annotations:

Marginal Citations
M5 1964 c. 29.
APPENDIX I
Civil Jurisdiction and Judgments Act 1982

1982 CHAPTER 27

PART IV

MISCELLANEOUS PROVISIONS

Provisions relating to recognition and enforcement of judgments

31 Overseas judgments given against states, etc.

(1) A judgement given by a court of an overseas country against a state other than the United Kingdom or the state to which that court belongs shall be recognised and enforced in the United Kingdom if, and only if—
   (a) it would be so recognised and enforced if it had not been given against a state; and
   (b) that court would have had jurisdiction in the matter if it had applied rules corresponding to those applicable to such matters in the United Kingdom in accordance with sections 2 to 11 of the M1 State Immunity Act 1978.

(2) References in subsection (1) to a judgment given against a state include references to judgments of any of the following descriptions given in relation to a state—
   (a) judgments against the government, or a department of the government, of the state but not (except as mentioned in paragraph (c)) judgments against an entity which is distinct from the executive organs of government;
   (b) judgments against the sovereign or head of state in his public capacity;
   (c) judgments against any such separate entity as is mentioned in paragraph (a) given in proceedings relating to anything done by it in the exercise of the sovereign authority of the state.

(3) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of a judgment to which Part I of the M2 Foreign Judgments (Reciprocal Enforcement) Act 1933 applies by virtue of section 4 of the M3 Carriage of Goods by Road Act 1965, section 17(4) of the M4 Nuclear Installations Act 1965, section
Part IV – Miscellaneous Provisions

32 Overseas judgments given in proceedings brought in breach of agreement for settlement of disputes.

(1) Subject to the following provisions of this section, a judgment given by a court of an overseas country in any proceedings shall not be recognised or enforced in the United Kingdom if—

(a) the bringing of those proceedings in that court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of that country; and

(b) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; and

(c) that person did not counterclaim in the proceedings or otherwise submit to the jurisdiction of that court.

(2) Subsection (1) does not apply where the agreement referred to in paragraph (a) of that subsection was illegal, void or unenforceable or was incapable of being performed for reasons not attributable to the fault of the party bringing the proceedings in which the judgment was given.

(3) In determining whether a judgment given by a court of an overseas country should be recognised or enforced in the United Kingdom, a court in the United Kingdom shall not be bound by any decision of the overseas court relating to any of the matters mentioned in subsection (1) or (2).
(4) Nothing in subsection (1) shall affect the recognition or enforcement in the United Kingdom of—
   
   (a) a judgment which is required to be recognised or enforced there under the 1968 Convention \[^F4\] or the Lugano Convention \[^F5\] or the Regulation \[^F6\] or the Maintenance Regulation;
   
   (b) a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies by virtue of section 4 of the Carriage of Goods by Road Act 1965, section 17(4) of the Nuclear Installations Act 1965, \[^F7\] . . . \[^F8\] regulation 8 of the Railways (Convention on International Carriage by Rail) Regulations 2005 \[^F9\] . . . or \[^F10\] section 177(4) of the Merchant Shipping Act 1995.

Annotations:

Amendments (Textual)

\[^F4\] Words in s. 32(4)(a) inserted (1.5.1992) by Civil Jurisdiction and Judgments Act 1991 (c. 12, SIF 45:3), s. 3, Sch. 2 para. 14 (with s. 4), S.I. 1992/745, art. 2

\[^F5\] Words in s. 32(4)(a) inserted (1.3.2002) by S.I. 2001/3929, arts. 1(b), 4, Sch. 2 para. 14

\[^F6\] Words in s. 32(4)(a) inserted (18.6.2011) by The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), reg. 6, Sch. 4 para. 9

\[^F7\] Words in s. 32(4)(b) repealed (1.1.1996) by 1995 c. 21, ss. 314(1)(2), 316(2), Schs. 12, 13, para. 66(b)(i) (with ss. 312(1), Sch. 14 para. 1)

\[^F8\] Words in s. 32(4) substituted (1.7.2006) by The Railways (Convention on International Carriage by Rail) Regulations 2005 (S.I. 2005/2092), reg. 9(2), Sch. 3 para. 2 (with reg. 9(3))

\[^F9\] Words in s. 32(4)(b) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), Sch. 1 Pt. 14

\[^F10\] Words in s. 32(4)(b) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), Sch. 13 para. 66(b)(ii) (with s. 312(1))

Marginal Citations

\[^M5\] 1933 c. 13.

\[^M6\] 1965 c. 37.

\[^M7\] 1965 c. 57.

33 Certain steps not to amount to submission to jurisdiction of overseas court.

(1) For the purposes of determining whether a judgment given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—

   (a) to contest the jurisdiction of the court;

   (b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;

   (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings.

(2) Nothing in this section shall affect the recognition or enforcement in England and Wales or Northern Ireland of a judgment which is required to be recognised or
enforced there under the 1968 Convention [F11 or the Lugano Convention][F12 or the Regulation][F13 or the Maintenance Regulation].

Annotations:

<table>
<thead>
<tr>
<th>Amendments (Textual)</th>
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<tbody>
<tr>
<td><strong>F11</strong> Words in s. 33(2) inserted (1.5.1992) by Civil Jurisdiction and Judgments Act 1991 (c. 12, SIF 45:3), s. 3, Sch. 2 para. 15 (with s. 4); S.I. 1992/745, art. 2</td>
</tr>
<tr>
<td><strong>F12</strong> Words in s. 33(2) added (1.3.2002) by S.I. 2001/3929, arts. 1(b), 4, Sch. 2 para. 15</td>
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<tr>
<td><strong>F13</strong> Words in s. 33(2) inserted (18.6.2011) by The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (S.I. 2011/1484), Sch. 4 para. 10</td>
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34 Certain judgments a bar to further proceedings on the same cause of action.

No proceedings may be brought by a person in England and Wales or Northern Ireland on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in another part of the United Kingdom or in a court of an overseas country, unless that judgment is not enforceable or entitled to recognition in England and Wales or, as the case may be, in Northern Ireland.

35Minor amendments relating to overseas judgments.

(1) The Foreign Judgments (Reciprocal Enforcement) Act 1933 shall have effect with the amendments specified in Schedule 10, being amendments whose main purpose is to enable Part I of that Act to be applied to judgments of courts other than superior courts, to judgments providing for interim payments and to certain arbitration awards.

X1(2) For section 10 of the Administration of Justice Act 1920 (issue of certificates of judgments obtained in the United Kingdom) there shall be substituted—

“10 Where—

(a) a judgment has been obtained in the High Court in England or Northern Ireland, or in the Court of Session in Scotland, against any person; and

(b) the judgments creditor wishes to secure the enforcement of the judgement in a part of Her Majesty’s dominions outside the United Kingdom to which this Part of this Act extends,

the court shall, on an application made by the judgement creditor, issue to him a certified copy of the judgement.

(2) The reference in the preceding subsection to Her Majesty’s dominions shall be construed as if that subsection had come into force in its present form at the commencement of this Act.”.

(3) In section 14 of the Administration of Justice Act 1920 (extent of Part II of that Act), after subsection (2) there shall be inserted—

“(3) Her Majesty may by Order in Council under this section consolidate any Orders in Council under this section which are in force when the consolidating Order is made.”.
APPENDIX J
Further Resources


Briggs A, *Private International Law in English Courts* (Oxford University Press, 2014)


Vos, Fontaine, Scott et al., *Civil Procedure (The ‘White Book’)* (Sweet & Maxwell, 2018)


