

Enforcing US judgments in England

Despite the close commercial links between the US and the UK, there is no convention or treaty providing for the reciprocal enforcement of judgments between the US and UK. Accordingly, the statutory schemes for registering judgments handed down by courts in convention or treaty countries are not available. Nevertheless, the enforcement in England of a judgment in personam handed down by a court in the US can be a relatively simple matter, which is governed by English common law principles.

Method of enforcement

A US judgment cannot be enforced directly in the UK (by execution or a similar process). Instead, the judgment will be viewed as a simple contract debt between the parties to it. It is this "debt" which can be enforced through the English courts and this is done by way of issuing new proceedings. The English court will generally not re-examine the merits of the underlying dispute. Nevertheless, certain criteria must be satisfied for the court to enforce the debt created by the judgment in the US. There are six important elements to consider:

1. Jurisdiction

The US court must have had international jurisdiction according to English conflict of laws rules. Broadly this means that the English court will have to be satisfied that either the judgment debtor was either present in the US when the US proceedings were commenced or entered an appearance in the US proceedings or otherwise expressly submitted to the jurisdiction of the US court.

2. Judgment for a definite sum

The US judgment must be for a definite and ascertainable sum to be enforceable in England. A declaratory judgment would not, for example, be enforceable. Costs orders relating to any proceedings would be enforceable, but only when the final figure is determined. The English courts will not entertain actions to enforce, either directly or indirectly, foreign penal or revenue law.

3. Final and conclusive judgment

In order to begin enforcement proceedings in England, the existence of the debt must have been pronounced upon finally and conclusively by the US court which heard the case. Then proceedings could be commenced in England to enforce the judgment. However, where US proceedings are or may be subject to an appeal to a higher court, it is likely that the English court will stay enforcement proceedings pending the appeal. If the US court has granted a stay of execution pending the hearing of the appeal, enforcement proceedings cannot be commenced in England.

4. Fraud

A US judgment which has been obtained by fraud will not be recognised or enforced in England. If the issue of fraud is raised in enforcement proceedings in England, this is one occasion on which the English court will consider re-examining the issues in the underlying action that relate to the alleged fraud, even if those issues have been considered by the US court.

5. Public policy

A US judgment will not be recognised or enforced by the English court if this would be contrary to UK public policy. For example, punitive damages awards are not enforceable in England (although the basic award, before the punitive element was added, would be enforceable). Given the similarities between the US and English legal systems and values, it will be rare for a US judgment to offend UK principles of morality or justice.

6. Natural or substantial justice

If the English court considers that the proceedings in the US were conducted in a manner contrary to natural or substantial justice, it will not enforce a judgment. One of the most common arguments raised under this heading is that the judgment debtor was not given sufficient and proper notice of the US proceedings and therefore did not have an adequate opportunity to defend the action. The English court will consider each case on its merits, but if the proceedings (including provisions as to notice) have been conducted in accordance with the laws of the relevant US court, the English court will be reluctant to interfere. If a defence of lack of notice is raised, a judgment debtor must be able to demonstrate that it had a reasonable prospect of successfully defending the action in the US.

The burden of proof is on the judgment debtor who seeks to oppose the enforcement of a US court judgment on the basis of one of the criteria listed. The general principle applied by the English courts is that a judgment in personam of a US court of competent jurisdiction which is final and conclusive will be conclusive in England between the parties.

Summary Judgment

Under part 24 of the Civil Procedure Rules, which govern the conduct of disputes in England, a Claimant can apply for summary judgment on the grounds that the Defendant has no real prospect of successfully defending the claim. This procedure provides for a shorter and simpler means of obtaining a judgment in connection with claims which cannot reasonably be disputed. The summary judgment mechanism is commonly used in proceedings to enforce a judgment of a US court.

US judgments in rem

A judgment in rem from a US court having competent jurisdiction is conclusive and binding in England against all the world (not just the relevant parties). To the extent that the judgment in rem relates to movables (which were situated in the US at the time of the proceedings), it is considered that such a judgment is enforceable in England by an action in rem.

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[Legal 500 and Chambers reviews]

Information sheets for US attorneys and clients presently include

- > Comparison check list of major European jurisdictions
- > Obtaining evidence in England for US proceedings
- > English injunctions to support US proceedings
- > Enforcing a US judgment in Europe
- > Legal professional privilege in England.

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