

# Enforcement: giving judgments and awards teeth overseas



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Court judgments and arbitral awards made in England and Wales generally require steps to be taken overseas in order to enforce those decisions in foreign jurisdictions.

Successful claimants in proceedings in the high court or arbitration in England may discover that the defendant has no assets in England against which the judgment or award can be enforced.

### Enforcing court judgments

If a claimant seeks to enforce a judgment of the English Courts in another EU member state (or Norway, Switzerland or Iceland), the procedure is now relatively straightforward. Prior to 10 January 2015, a 'declaration of enforceability' needed to be obtained, but the Recast Brussels Regulation has now removed that requirement, which has made the enforcement process faster and cheaper. In addition, although it is possible for the defendant to apply for refusal of recognition of the judgment in an attempt to prevent the judgment from becoming enforceable, such an application would only succeed in the most exceptional of circumstances. This is in line with the EU's general policy of making judgments easily enforceable between EU member states.

There are also reciprocal arrangements in place between the UK and other non-EU jurisdictions – including major maritime jurisdictions such as Singapore – which are designed to assist enforcement of English judgments in those locations.

Enforcement of an English judgment in a jurisdiction that is not covered by the EU regime or the reciprocal arrangements mentioned above will be an issue of local law in the jurisdiction in question. It is possible that local law issues will arise, even if the issue should be straightforward under reciprocal arrangements. The level of complexity, time required and costs incurred in enforcing judgments in such locations varies significantly from place to place and local advice should almost always be obtained.

- Enforcing English judgments in EU member states is now easier due to the Recast Brussels Regulation.
- New York Convention establishes uniform system for enforcing arbitral awards in almost every country worldwide.
- Enforcement in some jurisdictions can be unpredictable so local lawyers are still key.

### Enforcing arbitral awards

Enforcement of arbitral awards is generally governed by the New York Convention. The vast majority of jurisdictions worldwide have signed up to the New York Convention, which goes some way towards ensuring the existence of a uniform global system for enforcement of arbitral awards. Typically, awards are enforced in New York Convention signatory states within one year of the date on which the award was made, depending on the complexity of the case and the level of sophistication of the jurisdiction's legal system.

There have, however, been difficulties in ensuring uniform application of the Convention. For example, if the jurisdiction in which enforcement is sought considers that the award breaches 'public policy', it has discretion to refuse enforcement.

Many countries only rely on the 'public policy' defence in very exceptional circumstances, but some countries take a broader view of the issue. It is usually the case that enforcement actions are carried out by the local court, so another layer of complexity may arise. Enforcement of awards in those countries can, therefore, be unpredictable.

### Conclusion

In general, enforcement of judgments and awards worldwide is getting easier. Good contacts with local lawyers will, however, often be key to ensuring swift and cost-efficient enforcement.

