

PRACTICE DIRECTION – ENFORCEMENT OF JUDGMENTS IN DIFFERENT JURISDICTIONS

THIS PRACTICE DIRECTION SUPPLEMENTS PART 74

1. This practice direction is divided into two sections –
 - (1) Section I – Provisions about the enforcement of judgments
 - (2) Section II – The Merchant Shipping (Liner Conferences) Act 1982

SECTION I

ENFORCEMENT OF JUDGMENTS

Meaning of ‘judgment’

2. In rule 74.2(1)(c), the definition of ‘judgment’ is ‘subject to any other enactment’. Such provisions include –
 - (1) section 9(1) of the 1920 Act, which limits enforcement under that Act to judgments of superior courts;
 - (2) section 1(1) of the 1933 Act, which limits enforcement under that Act to judgments of those courts specified in the relevant Order in Council;
 - (3) section 1(2) of the 1933 Act, which limits enforcement under that Act to money judgments.

Registers

3. There will be kept in the Central Office of the Supreme Court at the Royal Courts of Justice, under the direction of the Senior Master –
 - (1) registers of foreign judgments ordered by the High Court to be enforced following applications under –
 - (a) section 9 of the 1920 Act;
 - (b) section 2 of the 1933 Act;
 - (c) section 4 of the 1982 Act; or
 - (d) the Judgments Regulation;
 - (2) registers of certificates issued for the enforcement in foreign countries of High Court judgments under the 1920, 1933 and 1982 Acts, and under article 54 of the Judgments Regulation;
 - (3) a register of certificates filed in the Central Office of the High Court under rule 74.15(2) for the enforcement of money judgments given by the courts of Scotland or Northern Ireland;

- (4) a register of certificates issued under rule 74.16(3) for the enforcement of non-money judgments given by the courts of Scotland or Northern Ireland;
- (5) registers of certificates issued under rules 74.17 and 74.18 for the enforcement of High Court judgments in Scotland or Northern Ireland under Schedule 6 or Schedule 7 to the 1982 Act; and
- (6) a register of Community judgments and Euratom inspection orders ordered to be registered under article 3 of the European Communities (Enforcement of Community Judgments) Order 1972.

Making an application

- 4.1 Applications for the registration for enforcement in England and Wales of –
 - (1) foreign judgments under rule 74.3;
 - (2) judgments of courts in Scotland or Northern Ireland under rule 74.15 or 74.16; and
 - (3) European Community judgments under rule 74.20,
 are assigned to the Queen’s Bench Division and may be heard by a Master.
- 4.2 An application under rule 74.12 for a certified copy of a High Court or county court judgment for enforcement abroad must be made –
 - (1) in the case of a judgment given in the Chancery Division or the Queen’s Bench Division of the High Court, to a Master or district judge;
 - (2) in the case of a judgment given in the Family Division of the High Court, to a district judge of that Division;
 - (3) in the case of a county court judgment, to a district judge.
- 4.3 An application under rule 74.17 or 74.18 for a certificate or a certified copy of a High Court or county court judgment for enforcement in Scotland or Northern Ireland must be made –
 - (1) in the case of a judgment given in the Chancery Division or the Queen’s Bench Division of the High Court, to a Master or district judge;
 - (2) in the case of a judgment given in the Family Division of the High Court, to a district judge of that Division;
 - (3) in the case of a county court judgment, to a district judge.
- 4.4 The following applications must be made under Part 23 –
 - (1) applications under rule 74.3 for the registration of a judgment;
 - (2) applications under rule 74.7 to set aside the registration of a judgment;
 - (3) applications under rule 74.12 for a certified copy of a judgment;
 - (4) applications under section III for a certificate for enforcement of a judgment;

- (5) applications under rule 74.20 for the registration of a Community judgment;
- (6) applications under rule 74.23 to vary or cancel the registration of a Community judgment; and
- (7) applications under rule 74.25 for the registration of an order of the European Court that the enforcement of a registered Community judgment should be suspended.

Applications under the 1933 Act

- 5. Foreign judgments are enforceable in England and Wales under the 1933 Act where there is an agreement on the reciprocal enforcement of judgments between the United Kingdom and the country in which the judgment was given. Such an agreement may contain particular provisions governing the enforcement of judgments (for example limiting the categories of judgments which are enforceable, or the courts whose judgments are enforceable). Any such specific limitations will be listed in the Order in Council giving effect in the United Kingdom to the agreement in question, and the rules in Section I of Part 74 will take effect subject to such limitations.

Evidence in support of an application under the Judgments Regulation: rule 74.4(6)

- 6.1 Where a judgment is to be recognised or enforced in a Regulation State, Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies.
- 6.2 As a consequence of article 38(2) of the Judgments Regulation, the provisions in Chapter III of that Regulation relating to declaring judgments enforceable are the equivalent, in the United Kingdom, of provisions relating to registering judgments for enforcement.
- 6.3 Chapter III of, and Annex V to, the Judgments Regulation are annexed to this practice direction. They were originally published in the official languages of the European Community in the *Official Journal of the European Communities* by the Office for Official Publications of the European Communities.
- 6.4 Sections 2 and 3 of Chapter III of the Judgments Regulation (in particular articles 40, 53, 54 and 55, and Annex V) set out the evidence needed in support of an application.
- 6.5 The Judgments Regulation is supplemented by the Civil Jurisdiction and Judgments Order 2001, SI 2001 No. 3929. The Order also makes amendments, in respect of that Regulation, to the Civil Jurisdiction and Judgments Act 1982.

Certified copies of judgments issued under rule 74.12

- 7.1 In an application by a judgment creditor under rule 74.12 for the enforcement abroad of a High Court judgment, the certified copy of the judgment will be an office copy, and will be accompanied by a certificate signed by a judge. The judgment and certificate will be sealed with the Seal of the Supreme Court.
- 7.2 In an application by a judgment creditor under rule 74.12 for the enforcement abroad of a county court judgment, the certified copy will be a sealed copy, and will be accompanied by a certificate signed by a judge.
- 7.3 In applications under the 1920, 1933 or 1982 Acts, the certificate will be in Form 110, and will have annexed to it a copy of the claim form by which the proceedings were begun.
- 7.4 In an application under the Judgments Regulation, the certificate will be in the form of Annex V to the Regulation.

Certificates under section III of Part 74

- 8.1 A certificate of a money judgment of a court in Scotland or Northern Ireland must be filed for enforcement under rule 74.15(2) in the Action Department of the Central Office of the Supreme Court, Royal Courts of Justice, Strand, London WC2A 2LL. The copy will be sealed by a court officer before being returned to the applicant.
- 8.2 A certificate issued under rule 74.17 for the enforcement in Scotland or Northern Ireland of a money judgment of the High Court or of a county court will be in Form 111.
- 8.3 In an application by a judgment creditor under rule 74.18 for the enforcement in Scotland or Northern Ireland of a non-money judgment of the High Court or of a county court, the certified copy of the judgment will be a sealed copy to which will be annexed a certificate in Form 112.

Material additional to section IV of Part 74

- 9.1 Enforcement of Community judgments and of Euratom inspection orders is governed by the European Communities (Enforcement of Community Judgments) Order 1972, SI 1972 No. 1590.
- 9.2 The Treaty establishing the European Community is the Treaty establishing the European Economic Community (Rome, 1957); relevant amendments are made by the Treaty of Amsterdam (1997, Cm. 3780).
- 9.3 The text of the Protocol of 3 June 1971 on the interpretation by the European Court of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is set out in Schedule 2 to the Civil Jurisdiction and Judgments Act 1982.

- 9.4 The text of the Protocol of 19 December 1988 on the interpretation by the European Court of the Convention of 19 June 1980 on the Law applicable to Contractual Obligations is set out in Schedule 3 to the Contracts (Applicable Law) Act 1990.

SECTION II

THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982

Content of this Section

10. The Merchant Shipping (Liner Conferences) Act 1982 ('the Act') contains provisions for the settlement of disputes between liner conferences, shipping lines and shippers. This Section of the Practice Direction deals with the enforcement by the High Court under section 9 of the Act of recommendations of conciliators, and determinations and awards of costs.

Exercise of powers under the Act

11. The powers of the High Court under the Act are exercised by the Commercial Court.

Applications for registration

- 12.1 An application under section 9 of the Act for the registration of a recommendation, determination or award is made under Part 23.
- 12.2 An application for the registration of a recommendation must be supported by written evidence exhibiting –
- (1) a verified or certified or otherwise authenticated copy of –
 - (a) the recommendation;
 - (b) the reasons for it; and
 - (c) the record of settlement;
 - (2) where any of those documents is not in English, a translation of it into English –
 - (a) certified by a notary public or other qualified person; or
 - (b) accompanied by written evidence confirming that the translation is accurate; and
 - (3) copies of the acceptance of the recommendation by the parties on whom it is binding, or otherwise verifying the acceptance where it is not in writing.
- 12.3 The evidence in support of the application must –

- (1) give particulars of the failure to implement the recommendation; and
 - (2) confirm that none of the grounds which would render it unenforceable is applicable.
- 12.4 An application for the registration of a determination of costs or an award of costs must be supported by written evidence –
- (1) exhibiting a verified or certified or otherwise authenticated copy of the recommendation or other document containing the determination or award; and
 - (2) stating that the costs have not been paid.

Order for registration

- 13.1 The applicant must draw up the order giving permission to register the recommendation, determination or award.
- 13.2 The order must include a provision that the reasonable costs of the registration should be assessed.

Register of recommendations

14. There will be kept in the Admiralty and Commercial Registry at the Royal Courts of Justice, under the direction of the Senior Master, a register of the recommendations, determinations and awards ordered to be registered under section 9 of the Act, with particulars of enforcement.

Section 10

Provisional, including protective, measures*Article 31*

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 State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

RECOGNITION AND ENFORCEMENT*Article 32*

For the purposes of this Regulation, '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 the determination of costs or expenses by an officer of the court.

Section 1

Recognition*Article 33*

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 who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

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

Article 34

A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

2. where it 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;

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

4. if it 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.

Article 35

1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 37

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

Section 2

Article 43

Enforcement

Article 38

1. A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 39

1. The application shall be submitted to the court or competent authority indicated in the list in Annex II.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 40

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

2. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Article 53 shall be attached to the application.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal is to be lodged with the court indicated in the list in Annex III.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 44

The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

Article 45

1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, 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 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.

3. The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 47

1. When a judgment must be recognised in accordance with this Regulation, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required.

2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 48

1. Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

Article 50

An applicant who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

Article 51

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for 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 State in which enforcement is sought.

Article 52

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State in which enforcement is sought.

Section 3

Common provisions

Article 53

1. A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

2. A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54

The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.

Article 55

1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 56

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative *ad litem*.

ANNEX V

Certificate referred to in Articles 54 and 58 of the Regulation on judgments and court settlements

(English, inglés, anglais, inglese, ...)

- 1. Member State of origin
- 2. Court or competent authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./fax/e-mail
- 3. Court which delivered the judgment/approved the court settlement (*)
 - 3.1. Type of court
 - 3.2. Place of court
- 4. Judgment/court settlement (*)
 - 4.1. Date
 - 4.2. Reference number
 - 4.3. The parties to the judgment/court settlement (*)
 - 4.3.1. Name(s) of plaintiff(s)
 - 4.3.2. Name(s) of defendant(s)
 - 4.3.3. Name(s) of other party(ies), if any
 - 4.4. Date of service of the document instituting the proceedings where judgment was given in default of appearance
 - 4.5. Text of the judgment/court settlement (*) as annexed to this certificate
- 5. Names of parties to whom legal aid has been granted

The judgment/court settlement (*) is enforceable in the Member State of origin (Articles 38 and 58 of the Regulation) against:

Name:

Done at , date

Signature and/or stamp

(*) Delete as appropriate.