

Recognition and Enforcement of Foreign Judgments in the United Kingdom

Introduction

1 The world has started to go through a series of changes from the beginning of the 20th century which led to an increase of interaction and interdependence between states and corporations resulting in creation of international or multi-jurisdictional laws as an outcome of globalisation. Nowadays business contracts are increasingly drafted in one country to be used in multiple countries and the United Kingdom (particularly England & Wales) is one of the countries that attract businesses to draft their contracts under its very own jurisdiction.

Future of the law of the United Kingdom may seem to be ambiguous due to the current political climate and the unknown result of Brexit but despite this, businesses still choose to draft their contracts under its law due to its flexibility and accommodating nature. Enforcement of foreign judgments in the United Kingdom can be done through numerous ways depending on the country of the original judgment and the relations it has. We can also witness the United Kingdom is trying to make this process easier for potential businesses through joining more international conventions and treaties.

This article will briefly explain the recognition and enforcement of foreign judgments in the United Kingdom. It also needs to be

clarified that most of the foreign business done in the United Kingdom is done under the jurisdiction of England and Wales, meaning the exclusion of the Scottish and the Northern Irish law and the article will be focusing on enforcements under the English and Welsh law and its courts.

European Judgments

The simplest way to enforce a foreign judgment would be through European Union instruments namely, the European Enforcement Order, the European Small Claims Procedure or the European Order for Payment Procedure, all of them which are subject to origin state of judgment being an European Union member state except Denmark. These procedures and order allow a judgement to be enforced without any intermediate proceedings. They are typically for commercial and civil proceedings only and do not usually extend to matters in family or criminal law.

Application of the three procedures previously mentioned are subject to Brexit and there will be amendments to the law in the UK in relation to the procedures coming into effect on the exit day from the EU. However, do bear in mind that, from the point of Turkey, this method of enforcement is not possible as Turkey is not a member state of the EU.

Enforcement and Recognition of a Turkish Judgment

Unlike the process for arbitration awards, there is no such straightforward procedure, an international treaty or convention provided for the judgments to be recognised or enforced obtained in Turkish courts. In courts of England and Wales, for the countries which do not have a bilateral agreement with United Kingdom on the particular matter, there is not a direct procedure.

The most appropriate way to enforce a Turkish court judgment in English courts would be to start a fresh set of proceedings in English courts for a debt with the unsatisfied Turkish judgment as the cause of action. Such judgment from a Turkish court may be enforced in English courts by re-starting the process on the judgments provided that:

- it was a final and conclusively determined the right and liabilities of the parties

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- it was for a definite sum of money
- the court had jurisdiction to decide on such a dispute according to the rules of English private international law

In contrast, the judgment will not be recognised in an English court if:

- foreign court who issued the judgment lacked jurisdiction according to the relevant English conflict of laws rules
- the judgment debt was fraudulently obtained
- the judgment is contrary to public policy in the United Kingdom
- the foreign judgment was contrary to requirements of natural justice enshrined in the English legal system

Further, as specified under the *Civil Jurisdiction and Judgments Act 1982, section 32(1)*, a foreign judgment may not be recognised where it was obtained in breach of a valid choice of court or arbitration clause stated in the same agreement.

3

In a situation where the existence of any of the above-mentioned circumstances is alleged, the burden of proof lies with the party that is resisting enforcement (the judgment debtor).

However, obtaining a recognition of the judgment in England may not be end of the matter. The judgment debtor may fail to comply with the judgment obtained in the English court and this is where enforcement comes in. There are a number of ways in which one party can enforce a judgment in which other party is required to complete a payment of money. The method used is dependent on the financial circumstances of the judgment debtor. These methods are:

- **Third party debt order:** The judgment creditor can obtain a further order from the court, against a third party who owes money to the judgment debtor requiring the payment to be directly made to the judgment creditor instead of the debtor.
- **Charging order:** The judgment creditor can obtain a court order giving a charge over property of the judgment debtor.

This is subject to property not having other charges over it that can take priority over yours

- **Writ of fieri facias:** This authorises a court enforcement officer, on behalf of the judgment creditor, to seize the judgment debtor's goods up to the value of the judgment debt with a view to selling them at auction.
- **Insolvency:** Applying to put the judgment debtor into insolvency results in someone closely supervising the judgment debtor's finances with a view to paying the debtor's creditors. However, the courts are not enthusiastic about insolvency proceedings being used as a "back door" method for debt collection.
- **Freezing injunction:** If the judgement creditor has reason to believe that the judgment debtor is attempting to dissipate its assets, or may do so, an injunction may be obtained to prevent the judgment debtor.

Conclusion

4

The United Kingdom and Turkey does not currently have any special bilateral agreements to ease the recognition and enforcement of judgments obtained in Turkish courts, but this should not discourage the companies or individuals who want to do business between both of the countries as there are ways, as explained above, which makes this certainly possible and easy when the procedure is followed.

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