

England and Wales

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

- Foreign judgments in personam may be recognized and enforced according to common law principles provided they satisfy the following requirements:
 - (i) **the court of the foreign country must have jurisdiction to give the judgment**
 - Subject to certain exceptions, a court of a foreign country outside the UK has jurisdiction to give a judgment *in personam* capable of enforcement or recognition if the person against whom the judgment is given
 - was, at the time the proceedings were instituted, present in the foreign country;
 - was claimant, or made a counterclaim in the proceedings in the foreign court;
 - submitted to the jurisdiction of the court by voluntarily appearing in the proceedings;
 - had agreed before the commencement of the proceedings, regarding the subject matter of the proceedings, to submit to the jurisdiction of that foreign court.
 - A court of a foreign country outside the UK has no jurisdiction where proceedings have been brought in the foreign court in breach of a valid jurisdiction agreement, and the judgment debtor did not submit or otherwise agree to the jurisdiction of that court.
 - (ii) **the judgment must be for an ascertainable sum of money (which may include a final order for costs); and**
 - (iii) **the judgment is final and conclusive.**
 - It must be shown that, in the court in which it is pronounced, the judgment "*...conclusively, finally and forever established the existence of a debt... so as to make it res judicata between the parties.*" (*Nouvion v Freeman* [1889] 15 App. Cas. 1, 9).
 - If a judgment can be varied by the court which pronounced it, it is unlikely to constitute a 'final and conclusive' judgment. If an appeal is pending in the foreign country where the judgment has been given, then this would not necessarily prevent the judgment being 'final and conclusive' but the English court may impose conditions around its enforcement to protect "*the interests of those who have the right of appeal.*" (*Ibid*, 13).

	<ul style="list-style-type: none"> • Where the above requirements are satisfied, a defendant may still resist the enforcement of a judgment in reliance on the following defences: <ul style="list-style-type: none"> (i) the foreign judgment was obtained by fraud; (ii) the foreign judgment is contrary to public policy; (iii) the foreign judgment is contrary to 'natural justice' (which may include a lack of due notice and proper opportunity to be heard, or some other substantial procedural defect which offends the English court's view of what constitutes 'substantial justice'). • The UK has concluded numerous bilateral and multilateral treaties relating to the recognition and enforcement of foreign judgments, including most recently the HCCH 2005 Choice of Court Convention. Where these treaties apply and there is a statutory basis for enforcement or recognition of a foreign judgment, the English court will apply the terms of those treaties in preference to any common law tests (and in fact, applications for recognition and enforcement made purely on a common law basis where a relevant treaty exists would usually be declined). • Where proceedings have been initiated in an EU Member State before the end of the Brexit transition period (31 December 2020) the Recast Brussels I Regulation, European Enforcement Order, European Order for Payment Procedure and European Small Claims Procedure will continue to apply to the recognition and enforcement of judgments given in those proceedings.
<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</p>
	<ul style="list-style-type: none"> • In order to recognize and enforce a foreign judgment in England it is necessary to bring a claim on the foreign judgment as a debt, in fresh court proceedings, or alternatively (if a relevant treaty applies) by making an application for registration of the foreign judgment. • Pursuant to s.12(1) of the State Immunity Act 1978 (SIA), any writ or other document required to be served to institute proceedings against a State (which may include an application for registration of a judgment) shall be served by being transmitted through the Foreign, Commonwealth and Development Office (FCDO) to the Ministry of Foreign Affairs of the state in question. S.12 SIA is not confined to the English Court's 'adjudicative' jurisdiction, but applies also to its 'enforcement jurisdiction' (<i>Norse Hydro ASA v State Property Fund of Ukraine</i> (Note) [2002] EWHC 2120 (Comm)). • Where s.12 applies, the procedure it establishes is, according to the Supreme Court, treated as mandatory and exclusive, and there is no jurisdiction to dispense with service according to other Court rules (<i>General Dynamics United Kingdom Ltd v Libya</i> [2021] UKSC 22). The judgment in <i>General Dynamics post dates Havlish v Iran</i> [2018] EWHC 1478 where the Court dispensed with service of a claim form on the Government of Iran as it had a policy of resisting service and it appeared to be aware of the claim against it.

	<ul style="list-style-type: none"> • The process for submitting a request for service to the FCDO is set out in r.6.44 of the Civil Procedure Rules 1998 (CPR). A certificate by the Secretary of State is conclusive evidence of whether, and if so when, a document has been served or received according to the procedure in s.12 SIA. • Where a party seeks to bring a claim, under common law principles, on a foreign judgment debt in England against a foreign state, the party will need to seek permission to serve the proceedings out of the jurisdiction on the foreign state pursuant to CPR 6.36. The application for permission must establish that the judgment debtor cannot assert state immunity pursuant to the SIA and that the foreign judgment is capable of recognition and enforcement according to the criteria in s.31 of the Civil Jurisdiction and Judgments Act 1982 (CJJA) (as to which, see further below).
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</p>
	<p>In dealings between private parties and states, the ability of the private party to sue a state party engages the concept of 'sovereign' or 'state' immunity. Whilst deriving from international law, the application of the law of state immunity in the United Kingdom is through the SIA. According to s.1 SIA, unless an exception applies, the English courts have no jurisdiction to adjudicate over foreign states. Exceptions to this general principle of immunity are set out in s.2 to 11 of the SIA and include proceedings relating to:</p> <ul style="list-style-type: none"> • Commercial transactions; • Certain employment contracts; and • Death or personal injury, or damage to or loss of tangible property, caused by an act or omission in the UK. <p>Pursuant to s.31 CJJA, the English court will recognize and enforce a foreign judgment against a State if:</p> <ul style="list-style-type: none"> • it would be so recognised and enforced if it had not been given against a State; and • the foreign court would have had jurisdiction in the matter if it had applied rules corresponding to those applicable to such matters in the UK in accordance with sections 2 to 11 of the SIA (being the above exceptions to state immunity). <p>In <i>NML Capital Ltd v Republic of Argentina</i> [2011] UKSC 31 the Supreme Court affirmed that foreign judgments must be recognized and enforced where the conditions in s.31 CJJA are met.</p> <p>The particular provisions of the SIA which restrict the enforcement remedies available against a State are discussed in relation to question 6 below.</p>

s.13(3) SIA provides that a State may give written consent to waive its immunity; 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. Notably, a written consent submitting to the jurisdiction of the English court does not (without more) constitute consent for the purposes of invoking an exception to immunity from enforcement.

The head of a State's diplomatic mission in the UK, or the person for the time being performing their functions, shall be deemed to have authority to give, on behalf of the State, the consent mentioned above.

In *A Co Ltd v Republic of X* [1990] 2 Lloyd's Rep. 520 the court considered the following wording in a contract: "...*The Ministry of Finance hereby waives whatever defence it may have of sovereign immunity for itself or its property (present or subsequently acquired)...*" finding that it constituted a submission to the jurisdiction of the English court. The consent did not, however, constitute any wider waiver and did not permit enforcement against diplomatic premises.

s.1(2) SIA requires a court to give effect to the immunity conferred by the SIA even though the State does not appear in the proceedings in question.

J.H.Rayner Ltd v Department of Trade [1989] Ch 72 confirms that the meaning of s.1(2) SIA is that the Court is obliged to make a determination as to whether or not, on a balance of probabilities, state immunity is established. In that case, LJ Kerr found that: "*Whenever the question arises under the Act of 1978 whether a defendant state is immune by virtue of section 1 or not immune by virtue of one of the exceptions, then this question must be decided as a preliminary issue in favour of the plaintiff, in whatever form and by whatever procedure the court may consider appropriate, before the substantive action can proceed.*"

In *Zhongshan Fucheng Investment Co Ltd v Federal Republic of Nigeria* [2023] EWCA Civ 867, the Court of Appeal held that the lower court was justified in granting the applicant an order enforcing its arbitration award on an ex parte basis on the papers, with the usual provision permitting the respondent to apply to set aside the Order within a given time limit. The applicant had drawn the possibility of sovereign immunity to the Judge's attention, as required by the general duty of 'full and frank' disclosure when making an ex parte application.

The respondent State missed a number of deadlines to set aside the Order and, on appeal, submitted that the court had a duty to give effect to the immunity in the SIA of its own motion and a determination on the papers was therefore not sufficient. The Court of Appeal rejected that argument, concluding (among other things) that the court had not disregarded its duty to determine immunity for the purposes of the SIA. According to the (standard) process the applicant followed when seeking the Order, arguments concerning immunity were before the court and were considered.

This judgment, while relating to the registration of an arbitration award for enforcement purposes, is analogous to the process followed to register a foreign judgment where an international treaty applies.

	<p>In terms of harmonizing provisions between various jurisdictions, the United Nations Convention on Jurisdictional Immunities of States and their Property is not currently implemented in UK law. The Convention requires thirty signatures to enter into force. Once in force, the Convention is similar to the position in the SIA insofar as it prevents post-judgment enforcement measures being taken against property of a state absent exceptions (Article 19).</p>
<p>4.</p>	<p>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</p>
	<p>The SIA does not contain any express provisions preventing a State from relying on state immunity as a defence, in circumstances where the State has conducted itself improperly. As a matter of domestic law, because the SIA is a complete code, if the case does not fall within one of the express statutory exceptions, the state is immune (<i>Benkarbouche v Embassy of the Republic of Sudan</i> [2017] UKSC 62).</p> <p>The UK is a signatory to the European Convention on Human Rights (ECHR) and has incorporated the provisions of the ECHR into domestic law in the Human Rights Act 1998 (HRA 1998). The ECHR includes rights intended to prevent improper conduct. For example, the prohibition on torture in Article 3 ECHR.</p> <p>By section 2 HRA 1998, a UK court determining a question arising in connection with a Convention right must take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights (ECtHR) in Strasbourg. The ECtHR has considered the tension between the doctrine of state immunity and human rights legislation.</p> <p>In <i>Al-Adsani v United Kingdom</i> [2002] 34 E.H.R.R.11, the applicant initiated civil proceedings in England against the government of Kuwait in respect of physical and mental injuries caused by alleged torture. The government of Kuwait was found to be immune from suit.</p> <p>The applicant appealed to the ECtHR alleging that state immunity violated convention rights (specifically Article 3 - prohibition of torture, and Article 6 – right to a fair trial). The ECtHR found that, as the alleged torture did not take place within the jurisdiction of the UK, the UK was not under a duty to provide a civil remedy. There was therefore no violation of Article 3.</p> <p>Regarding Article 6, the ECtHR found that state immunity principles did not impose a disproportionate restriction on the right of access to a court in Article 6.</p> <p>This is in line with later authority such as <i>Jones v Saudi Arabia</i> [2006] UKHL 26, where the claimants argued that the proscription of torture by international law precluded the grant of immunity to states or individuals sued for committing acts of torture, since such acts could not constitute governmental acts or exercises of state authority entitled to state immunity. The House of Lords rejected this argument, finding that breach of a 'jus cogens' norm of international law did not suffice to confer jurisdiction. (See also <i>Congo v Belgium</i> [2002] ICJ Rep 3 for case law authority</p>

	<p>pertaining to state immunity claimed for serving foreign minister accused of crimes against humanity).</p> <p>This position may be contrasted with that of <i>Belhaj v Straw</i> [2017] UKSC 3, where it was found that state immunity did not apply to claims that the UK government had been complicit in torts, including unlawful detention, rendition and torture, allegedly committed by other states in overseas jurisdictions. The related doctrine of 'Foreign Act of State', that a domestic court would not adjudicate on certain categories of sovereign act by a foreign state abroad, did not apply on public policy grounds due to the egregious nature of the acts themselves.</p> <p>s.5 SIA provides that a State is not immune as respects proceedings in respect of</p> <ul style="list-style-type: none"> (a) death or personal injury; or (b) damage to or loss of tangible property <p>caused by an act or omission in the United Kingdom.</p> <p>In the recent case of <i>Shehabi v Kingdom of Bahrain</i> [2022] EWHC 397 (QB), a case of alleged computer hacking where the hacked devices had been in the UK for a period of time, the Court found that the exception in s.5 does not require the presence of the infringing state actor in the UK or all of the Defendant's acts to have taken place in the UK. The Kingdom of Bahrain was not, therefore, immune from suit.</p>
<p>5.</p>	<p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p>
	<p>Pursuant to s.31 CJJA (as above), a judgment of a foreign court against a state other than the UK shall be recognized and enforced only if</p> <ul style="list-style-type: none"> (a) it would be so recognized 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 UK in accordance with s.2 to 11 of the SIA. <p>By virtue of s.31(a) above, the due process standards relevant to how any foreign judgment has been obtained (discussed in answer (1) above) apply equally to the recognition and enforcement of foreign judgments against states.</p> <p>The burden of proving whether due process standards have been met will generally depend on the stage the recognition and enforcement proceedings have reached. At the outset, where a Claimant may be seeking permission from the English court to serve enforcement proceedings out of the jurisdiction or bringing an ex parte application to register a judgment, the Claimant must bring to the Court's attention any matters that the Defendant (had it been present) would have highlighted to the Court, including those related to due process standards, and sovereign immunity.</p>

	<p>Where a party is enforcing a foreign judgment <i>against the UK</i>, then pursuant to s.19 of the SIA, a judgment of a state which is a signatory of the European Convention on Sovereign Immunity need not be recognized if</p> <ul style="list-style-type: none"> (a) it is manifestly contrary to public policy or if any party to the proceedings in which the judgment is given had no adequate opportunity to present his case; or (b) if the judgment was given without provisions corresponding to the service standards and special time limits in s.12 SIA having been complied with, and the UK has not entered an appearance or applied to have the judgment set aside. <p>As described in s.2 above, s.12 of the SIA prescribes certain methods of service of the English enforcement proceedings on a State. It also provides (among other requirements) that 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 in accordance with the requirement to serve proceedings on the ministry of foreign affairs of the state. No judgment may be entered to recognize or enforce the judgment, except on proof that the service requirements have been complied with and that the time for entering an appearance as extended under s.12 SIA has expired.</p> <p>Pursuant to s.19(3) of the SIA, where the judgment was given against the UK in proceedings in respect of which the UK was not entitled to immunity pursuant to s.6(2) of the SIA, a court need not recognize the foreign judgment if the court that gave judgment</p> <ul style="list-style-type: none"> (a) Would not have had jurisdiction in the matter if it had applied rules of jurisdiction corresponding to those applicable to such matters in the UK; or (b) Applied a law other than that indicated by the UK rules of private international law and would have reached a different conclusion if it had applied the law so indicated. <p>S.19 of the SIA also provides certain exceptions to recognition of a foreign judgment against the UK, where the result of the judgment is inconsistent with another earlier judgment given in proceedings between the same parties relating to the same subject matter.</p>
<p>a.</p>	<p><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></p>
	<p>As set out above, by virtue of s.31 CJJA, the due process requirements in relation to any foreign judgment (discussed in answer (1) above) apply equally to the recognition and enforcement of foreign judgments against States.</p>

	<p>The enforcement or recognition of a foreign judgment may be resisted on the basis that the foreign court's procedures breached the rules of natural justice, including a failure to effect proper service or to give notice of the foreign proceedings.</p> <p>In addition, the court may refuse recognition or enforcement where a defendant has had no proper opportunity to substantively defend the foreign process and this has resulted in 'substantial injustice.'</p> <p>Even where the due process for service laid down by the foreign court has not been followed, or the process in the foreign court may contravene the English court's view of 'natural justice', the judgment may still be enforced if the defendant has been given a proper opportunity to challenge the existence of the relevant judgment in the foreign court.</p> <p>Pursuant to s.19 SIA, a judgment of a State which is a signatory of the European Convention on Sovereign Immunity <i>against the UK</i> need not be recognized if</p> <ul style="list-style-type: none"> • the judgment was given without service requirements corresponding to those in s.12 of the SIA having been followed; • the time for entering an appearance as extended under s.12(2) SIA was not complied with; and • the UK has not entered an appearance or applied to have the judgment set aside.
<p>b.</p>	<p><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></p>
	<p>In cases to which s.12(1) of the SIA applies, <i>"the process for service of an order for recognition or enforcement via FCDO is mandatory and exclusive, subject only to the possibility of service in accordance with s.12(6) SIA, in a manner agreed by the defendant state"</i> (<i>General Dynamics United Kingdom Ltd v Libya</i> [2021] UKSC 22). In <i>General Dynamics</i>, the Court examined the position in Libya and the fact that while the British Embassy in Tripoli was officially closed, there was sufficient staff presence to enable the FCDO to transmit the documents for service to the Ministry of Foreign Affairs in Libya. This decision overrides earlier authority where a more flexible deviation from this rule was permitted in exceptional circumstances such as war or civil unrest.</p> <p>The later 2023 case of <i>European Union v Syria</i> [2023] EWHC 1116 (Comm) confirms that s.12(1) SIA does not prescribe the method for transmission by the FCDO, which can use its discretion in determining the appropriate method of service in a State, as long as the service method is not prohibited by that State's laws. In that case the English Court declared that documents transmitted by the FCDO to Syria's foreign ministry by email was good service, in circumstances where the UK had no diplomatic presence in Syria at that time.</p> <p>Where the form of service employed in the original proceedings is under scrutiny, the position appears more flexible as the rules associated generally with the enforcement of foreign judgments should apply (see (1) above). The English court may consider whether there was a procedural defect in service which constituted a breach of the</p>

	English court's view of substantial justice, depending on the circumstances of the particular case. This can include circumstances where a party has not been given proper notice of the proceedings and not, therefore, had an opportunity to present its case before the court.
c.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i>
	The standard the court would apply is related to the concept of due process and natural justice. Where the recognition of a judgment is challenged on the basis of a lack of a proper opportunity to be heard, the court will consider the specific facts of the case. In general terms in civil and commercial matters, there is no automatic right to legal representation. However, if a lack of representation has resulted in substantial injustice or an inability for the state to present its case, then this may be taken into account when considering whether the foreign judgment has been rendered in breach of the principles of natural justice and should not, therefore, be enforced.
d.	<i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i>
	Where a party has not been able (or even has elected not) to obtain representation or been present in the original proceedings, but then seeks to challenge enforcement in England, the English court may still assess whether there was a procedural defect in the original proceedings which constitutes ' <i>a breach of the English Court's views of substantial justice</i> ' (<i>Adams v Cape Industries plc</i> [1990] Ch 433 (obiter)), where it was said that there was a breach of natural justice in the way that the Federal District Court in Texas had assessed damages in favour of the plaintiffs, where the Defendant had elected not to appear or be represented.
6.	What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?
	<ul style="list-style-type: none"> • s.13(2) SIA prevents a party from enforcing any judgment against the property of a State, subject to certain exceptions: <ul style="list-style-type: none"> ○ Pursuant to s.13(3) SIA, a State may give written consent (such as by treaty) to the grant of relief against it, which may include an enforcement process. ○ State owned property that is for the time being in use or intended for use for commercial purposes may be enforced against (s.13(4) SIA). 'Commercial purposes' is to be given its ordinary and natural meaning (<i>ServVass Inc v Rafidain Bank</i> [2012] UKSC 40).

- The State property must be used or intended to be used *exclusively* for commercial purposes to be capable of enforcement (*Alcom v Republic of Columbia* [1984] AC 580). Pursuant to s.13(5) SIA, the head of a diplomatic mission may give a certificate as to the present use of the property and its intended future use. The party seeking enforcement bears the burden of proving that a property is in use for commercial purposes (*LR Avionics Technologies Limited v The Federal Republic of Nigeria* [2016] EWHC 1761 (Comm)).
- When enforcing against property of a foreign state in the UK, a party must use the following procedure:
 - Before any enforcement proceedings are commenced, the Master must be notified in writing including a statement that enforcement is sought against a foreign state and identifying the intended method of enforcement. The Master's direction must also be sought.
 - The Master must then notify the Foreign and Commonwealth Office of the intended enforcement before issuing the relief sought (paragraphs 22.99 – 22.102 Kings Bench Guide, 2023).
- Regarding enforcement against the UK (or "the Crown"), the Crown Proceedings Act 1947 (CPA) places certain limitations on the remedies that can be obtained in civil proceedings.
- Pursuant to section 21 CPA, where a party claims injunctive relief or for the recovery of land, the Court is restricted to granting a declaration of the rights of each party, rather than any Order for specific performance or delivery up of property.
- Pursuant to s.25 CPA, where an Order is made against the Crown or a UK Government Department, the Court must provide a certificate containing particulars of the Order, including any sum payable. On receipt of the Order and certificate, the appropriate UK Government Department must pay the certificated amount. No other attachment or execution process must be issued against the Crown.
- CPR 66 carries this into effect, stating that the following rules concerning usual enforcement methods, inter alia, do not apply to any order made against the Crown:
 - Rule 72- third party debt order;
 - Rule 73 – charging orders;
 - Rule 84- enforcement by taking control of goods;
 - Rule 89- attachment of earnings orders;
 - Rule 69 - an order for the appointment of a receiver.

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