



DISPUTE RESOLUTION | Cross-border disputes and COVID-19: Enforcing judgments and awards worldwide during and following a global pandemic

Parties are finding it more difficult to meet payment or other contractual obligations as a consequence of the pandemic. That will inevitably lead to an increase in disputes.

In turn, this will not only mean that there will be more Court judgments and arbitration awards, but also that a higher proportion of them will be breached or remain unsatisfied.

Where judgment debtors or their assets are located abroad, international enforcement may become a necessary step.

Before a foreign judgment/award may be enforced however, it will generally first have to be “domesticated” (i.e. rendered enforceable locally). In this respect:

- The legal criteria which are to be met in the “enforcing country”, the defences that may be available, and the types of remedies that can be enforced, vary from country to country to country. They will depend upon any relevant international agreements or understandings which the enforcing country has with the country in which the judgment/award was obtained (the “country of origin”) and/or local law.
- The same is also true of the procedural mechanisms by which such judgments/awards are “domesticated”. Those mechanisms may require steps to be taken in the country of origin, in the enforcing country, or in both.
- It may be that not all of the “domestication” mechanisms are operating in the enforcing country during the pandemic. Further, any local (or perhaps even foreign) rules imposing temporary debt moratoriums might prevent or suspend the enforcement of judgments, or result in the exercise

of a judicial discretion not to enforce, for example on public policy grounds.

- Even once the virus has sufficiently subsided – in the country of origin and/or in the enforcing country as may be necessary – “domestication” of the judgment/award may take longer than usual in view of the likely backlog, and judgment debtors may be more likely to challenge it, in order to “buy time” and/or avoid payment or other compliance altogether.

Further, once “domesticated”, the judgment/award will still need to be enforced. Some means of enforcement (a matter for local law) may be temporarily suspended and, as time elapses, target assets may dwindle or prove harder to locate as the economic implications of the pandemic bite. Conversely however, enforcement options may increase as businesses begin to recover.

Whilst a judgment creditor must be proactive (and in some instances speed may be of the essence), it should adopt a considered, measured and pragmatic approach, taking account of all the circumstances, bearing in mind the following:

- The judgment debtor may have been unable to make payment, or otherwise to comply, solely because of the virus and through no fault of its own (indeed, this might have been a sufficient legal, commercial or other reason not to bring the claim in the first place and/or may be sufficient reason not to enforce it, including bearing in mind government guidance such as that issued by the UK Cabinet Office). Further, the judgment debtor may recover in the relatively short term and thus make payment of its own volition.
- On the other hand, the default of the judgment debtor may be entirely unrelated to the virus (indeed, it may even be using the pandemic unjustifiably to delay or avoid payment), and/or the judgment creditor may itself be in dire need of the cash to which it is entitled in order to satisfy its own commitments.
- A judgment debtor is likely to have outstanding payment obligations in respect of other unsatisfied judgments or debts too.
- From a financial perspective, the liquidation of the judgment debtor may be an option for the judgment creditor (although in some instances it may be temporarily prevented from triggering insolvency proceedings in view of COVID-19). However, liquidation could equally have adverse implications.
- It may be in the judgment creditor’s interests, from a business perspective, for the judgment debtor to survive.
- The judgment creditor may wish to continue to trade with the judgment debtor or, conversely, it may be that there is no ongoing relationship.
- The approach that a judgment creditor adopts may have reputational impacts.

The effects of COVID-19 will continue for some time to come, and the importance of international enforcement will only grow as the economic consequences of the pandemic emerge in the longer term.

The note which can be accessed via the link below highlights some of the issues arising, and considers the options available, as regards:

- the enforcement in England and Wales of foreign Court judgments and international arbitration awards; and

- the enforcement abroad of Court judgments and arbitration awards obtained in England and Wales,

both during, and following, the global pandemic. It also provides some commercial and practical guidance in this regard during these difficult times.

Downloads – [Download Document](#)

Authors

- [Daniel Hart](#)