MAITLAND

FORUM

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The Maitland Jurisdiction Bulletin

In this issue

Welcome to the first edition of Forum: the Maitland Jurisdiction Bulletin.

Can a claim be brought in the claimant's preferred court or tribunal? Can the decisions of that court or tribunal be enforced where the relevant defendant or the relevant property is located? When will another court give, or withhold, assistance with interim measures? What happens to the jurisdiction analysis when insolvency intervenes? The vast majority of the cases which we see have a cross-border element; and these are, in practice, the questions upon which such disputes often turn.

In Forum we are looking forward to sharing with you news and insights from members of Maitland Chambers about this crucial area of the law, as it applies in England, in leading offshore jurisdictions and in the world of arbitration. Issues will be published roughly every six months, containing a mix of reports on new developments, articles addressing problems in greater depth and a digest of key recent decisions.

In this issue, Benjamin John guides us through the Hague Judgments Convention 2019, which came into force this July and probably marks the biggest change in the enforcement landscape for England & Wales since Brexit; Watson Pringle and James Mitchell address difficult questions in applying Forum Conveniens in Multi-Party Cases; Promit Chatterjee analyses the controversial recent decision of the Court of Appeal in relation to bankruptcy petitions founded on foreign judgment debts in Servis-Terminal v Drelle, for which the Supreme Court has recently granted permission to appeal; and James Mitchell digests the 2025 English case law on jurisdiction.

We hope you enjoy and join us again for the next issue!

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Re-establishing the portability of English judgments post-Brexit? The Hague Judgments Convention 2019.

By Benjamin John

Named with the deadening drafting hand of international diplomacy, the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ("Hague 2019") is nevertheless an important development. It came into force for the UK on 1 July 2025, and – for the first time since Brexit – provides a relatively broad-ranging uniform framework for the recognition and enforcement of judgments between the UK and EU member states[1], as well as between the UK and the other contracting states[2].

It is something with which practitioners in commercial and fraud litigation and arbitration rapidly need to be familiar. This article aims to introduce the new provisions and understand why they are of importance, surveying some problem and interesting areas as we go.

Why does it matter?

Until Brexit, judgments from EU Member States[3] and the EFTA States could be enforced with relative ease in this jurisdiction – and vice versa – under the "**Brussels Recast**" Regulation[4] and "**Lugano**"[5], respectively. The position since has been much more fragmentary:

- Judgments from EU Member States were, broadly, enforceable in England in the same way as judgments from the rest of the world are enforceable: by reference to either (i) a hotch-potch of different provisions applicable to certain limited countries with whom we have bilateral or limited (in scope) multi-lateral enforcement arrangements[6]; or (ii) by action on the judgment at common law[7].

- English judgments could be exported to EU member states only by reference to the same limited bi- or multi-lateral arrangements, or by reference to the local law on recognition and enforcement in each member country.

It is to be hoped that Hague 2019 will bring back some of the certainty, and uniformity, that existed prior to the UK's departure from the EU:

- It will facilitate the enforcement of English judgments abroad and help to reinforce the UK's standing as a forum for the resolution of cross-border disputes.

- It is likely that it will enhance the enforceability of English judgments in a much wider range of jurisdictions in due course.

- It will permit easier recognition and enforcement of foreign judgments in England & Wales – both immediately and, as its reach grows, into the future too.

This is not a return – as regards the EU – to the full force of the Brussels Recast; but it goes some way towards re-establishing the previous ease of portability of English judgments and the importability of foreign judgments into England.

Scope – when will Hague 2019 apply?

Timing – when does your action have to have commenced?
Hague 2019 will apply to the recognition and enforcement of English judgments only where the proceedings leading to the judgment were commenced after the Convention came into force for both the UK and the state of enforcement (so from 1 July 2025 for the UK) – i.e. importantly, it is the date proceedings are commenced, and not the date judgment is given, that is relevant[8].

Location – where does your judgment have to come from or be going to?
The position is reciprocal between England and other countries which have signed up to and implemented Hague 2019[9] – at the moment that is the EU (apart from Denmark), Ukraine and Uruguay. Albania and Montenegro will be added in March 2026.

Subject matter – what does your judgment have to relate to?
Hague 2019 applies to "civil and commercial matters"[10]. The concept is best defined negatively by listing what's not covered. In short, it does not extend to revenue, customs or administrative matters[11]; and certain other matters are expressly excluded from its scope[12].

Judgment - what counts as a judgment?
The convention applies to 'any decision on the merits given by a court'[13]. That means what it says, but there are a few points to note.

It includes:
- Both monetary and non-monetary judgments (including injunctions, as long as they are final).
- Default judgments – these seem to be included[14], although they are (at least in one obvious sense) not judgment on the merits. It will nevertheless still be prudent, where it is possible, to obtain summary rather than default judgment – not least because (even on the basis that default judgments count as "judgments" under Hague 2019) recognition under Hague 2019 can be refused on grounds of public policy, and a number of states in the EU consider their public policy to be offended by foreign judgments which give no reasons for the decision.
- Costs rulings[15].

It excludes:
- interim measures (such as an interim injunction)[16].
- any judgment which does not have effect or is not enforceable in the state of origin[17].
- judgments giving effect to third state judgments[18].

In addition, recognition of judgments under appeal (or in respect of which time for appealing has not expired) in the Court of origin "may be refused or postponed"[19]. The use of "may" means that this is not a bright line restriction – but whether it is wise to take a chance on a judgment being appealed in the court of origin will be something to keep under review as Hague 2019 beds in. If recognition/enforcement is refused on this basis, it does not prevent a further application.

The scheme of Hague 2019

Importantly, the model adopted by Hague 2019 is conceptually different to the Brussels/Lugano model, with significant consequences.

The Brussels/Lugano scheme first defined the jurisdiction of courts – i.e. essentially allocated cases to the correct EU court; and then, secondly, forbade investigation of, or complaint about, jurisdiction questions at the point of recognition/enforcement. It essentially required automatic recognition or enforcement of a judgment given in the EU, on the basis that the Court of origin would initially have taken jurisdiction in accordance with the Brussels rules.

In contrast, the Hague 2019 scheme has no jurisdiction allocation provisions – that is left to each individual country. Instead it asks, at the recognition/enforcement stage, two questions: (i) is the judgment of a nature that can pass through one of a number of "jurisdictional filters" in Art 5; and (ii) does the judgment engage any of the grounds for refusal of recognition in the Convention (mostly in Art 7)?

Whilst the Art 5 jurisdictional filters look back to the basis upon which the Court of origin exercised jurisdiction, they raise a substantive question to be investigated and answered at the recognition/enforcement stage by the receiving Court (separately from the consideration which the Court of origin gave to jurisdiction questions). One consequence of this is that recognition and enforcement under Hague 2019 is going to be a much longer and more substantive process than under the Brussels Recast or Lugano. And, of course, it means that – at least generally – litigants with cases with international elements will have to address questions of jurisdiction twice in the litigation process if they wish to enforce in courts other than the court of origin. Further, the fact that there are no jurisdiction allocation provisions gives greater scope than was the case under the Brussels Recast for parallel proceedings in different jurisdictions "racing" to be the first to a judgment which can be enforced[20].

If a judgment passes through any jurisdictional filter and doesn't run up against any ground of refusal (and otherwise satisfies the requirements of the Convention), then it must be recognised and enforced. If the judgment does not pass those tests, the Convention will not assist the recognition or enforcement, but that is as far as it goes: it does not bar recognition and enforcement by reference to the common law, or by recourse to other provisions of national law[21].

Grounds for recognition/enforcement in Article 5

Essentially, these fall into four broad groups[22].

Group 1: Residence. The filters in sub-paragraphs (a), (b), and (d), look to a residential connection between 'the person against whom recognition or enforcement is sought' and the original court at the time they became a party to the underlying proceedings. The key concept is habitual residence – for natural persons and companies[23], with additional provisions to capture the principal place of business of natural persons (if the judgment arose out of that business), and the places where branches or agencies etc were maintained (if the judgment arose out of activity of the relevant branch, agency etc).

Group 2: Submission. The filters in sub-paragraphs (c), (e), (f), and (l) are available when the person against whom recognition is sought can be said to have consented or agreed to the jurisdiction of the original court. Essentially this covers: (i) people who voluntarily brought a claim or (connected) counterclaim; and (ii) defendants who expressly consented to jurisdiction or submitted to it.

The submission filter in sub-paragraph (f) is interestingly drafted: it applies when "the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law" (emphasis added). One can immediately see scope for protracted argument about what is and isn't evident under any particular law and what "would not have succeeded" is to mean.

Group 3: Territorial connection between the State of origin and the cause of action. The filters in sub-paragraphs (g) to (k), are framed in terms of particular causes of action rather than the position of individuals. The major ones for our purposes relate to contractual obligations (where the judgment must be given by a court of the State in which that obligation was or should have been performed) and torts "giving rise to death, physical injury, damage to or loss of tangible property" (where the act or omission directly causing that harm occurred in the State of origin, irrespective of where the harm occurred).

The "tort filter" is significantly narrower than that in other regimes – in particular, it relates only to tangible property: so it looks like pure economic loss falls outside its scope.

Group 4: Choice of Court agreements. The filter in sub-paragraph (m) applies to asymmetric or non-exclusive jurisdiction clauses in favour of the Court of origin. Importantly – and this is rather an oddity – it does not include exclusive jurisdiction clauses. Thus, to be clear: if the judgment has been given in the Court of Origin pursuant to an exclusive jurisdiction clause, that is NOT a basis for recognition under the Hague 2019.

The reason is – in theory – so as not to trespass on the provisions of Hague 2005, which deals only with recognition and enforcement of judgments given pursuant to an exclusive jurisdiction clause. However, the carve out of exclusive jurisdiction clauses as a basis for recognition under Hague 2019 is not defined to be co-extensive with those exclusive jurisdiction clauses which would qualify for recognition or enforcement under Hague 2005. So a litigant could find itself with an exclusive jurisdiction clause which doesn't qualify under Hague 2005 (e.g. because it was not agreed after Hague 2005 came into force in the relevant territory[24]), but is also excluded as a basis for recognition under Hague 2019. It remains to be seen how much of a problem this actually is: (a) over time, the issue is likely to become less relevant (at least insofar as it is caused by the timing problem mentioned above); and (b) it may be that in some cases, a different jurisdictional filter will still exist – so that Hague 2019 can be invoked on that alternative basis.

Reasons for refusal of recognition/ enforcement

Having passed through a jurisdictional filter, the judgment must then pass a further test: is there a basis on which recognition or enforcement should be refused? The possible bases for refusal are limited to those set out in the Convention – they fall into two camps: those that may be temporary and those which are conclusive.

In the former camp: recognition or enforcement may be postponed or refused if there are prior parallel proceedings pending before a court of the state of enforcement (subject to certain conditions). Where recognition or enforcement is refused on this basis, a party may re-apply subsequently[25].

In the second camp – conclusive refusals – are the following bases on which recognition or enforcement may (not must) be refused:

- the defendant did not receive proper notice of the proceedings;
- the judgment was obtained by fraud;
- recognition or enforcement would be manifestly incompatible with public policy in the enforcement state;
- the original proceedings were contrary to a jurisdiction agreement;
- the judgment is inconsistent with a judgment between the same parties, being either a judgment by the court of the enforcement state or an earlier judgment by another court that could be recognised in the enforcement state; and
- It can also be refused to the extent that a judgment awards damages that do not compensate a party for actual loss or harm suffered (e.g. exemplary or punitive damages).

The first five[26] are familiar to English lawyers from actions on a judgment at common law. The last one – the damages point[27] – is less so, and raises an issue as to what sort of investigation might be permitted: one can immediately see that a judgment for damages (not labelled as exemplary or punitive) which it was contended gave more than reasonable compensation for damage or loss caused might require the requested court to delve further into the merits of the underlying case/judgment than would be considered ideal at the enforcement stage.

Equally interesting is the fact that these grounds do no require refusal of recognition or enforcement: the receiving court "may" refuse on these grounds, but does not have to do so. That is likely to have been to retain flexibility and – by identifying very broad categories that "may" lead to a refusal recognition/enforcement – to have made the Convention acceptable to a wide range of states: precisely because what would count (for example) as a judgement obtained by fraud or an unfair process would vary from nation to nation and could be accommodated by a broad strokes approach in this area. Nevertheless, that also represents a potential weakness in the finalised text: by accommodating the variability of what different states' national law or legal tradition would consider fulfils the broad categories of refusal, there is likely to be a level of undesirable inconsistency in the application of Hague 2019 by the courts of different states.

Concluding thoughts: where are we now with Hague 2019 and what might the future hold?

Let us conclude by stepping back and looking at the bigger picture.

Is Hague 2019 an improvement on the situation post-Brexit? Assuredly, yes. It will provide at least some level of uniformity and predictability – and that predictability will increase over time as case law (both here and in the EU) resolves issues that are at present are uncertain – and will make it easier than it is has been since we left the EU to port (and import) judgments between us and our closest trading partners.

Is it better than the regime under the Brussels Recast? Assuredly, no – at least in terms of the pure question of the enforcement and recognition of judgments between the UK and EU states. For reasons we have touched upon above: (a) the process of enforcement and recognition is much more cumbersome and requires the consideration of questions of substance as to the satisfaction of the requirements of the Convention; (b) there is even the prospect of complicated and burdensome questions which delve to some extent into the underlying merits of the judgment – a question likely to be hotly contested both as a matter of principle and then on the facts of individual cases; (c) it will accordingly, take longer and be more expensive; the more so in the short term; (d) the lack of jurisdiction allocation provisions, associated with smoother enforcement under Hague 2019, raises the possibility of parallel proceedings in different jurisdictions "racing" to a judgment which can be enforced; and (e) there is, more generally, the risk of divergence in interpretation. The interpretation of the Convention is down to each national court and, although the Convention says that its interpretation should have regard to its "international character[28]", that is unlikely to be on much assistance. Practitioners will need to keep an eye on the European Court's jurisprudence on Hague 19, as that will guide the EU's courts when being asked to recognise and enforce an English judgment.

The future in relation to Hague 2019 probably depends on whether the UK rejoins the Lugano Convention (something which has so far been resisted by Europe). If we do, the importance of Hague 2019 would diminish, as it will be superceded as regards Europe by Lugano. But if we don't rejoin Lugano, Hague 2019 will be the only game in town for us in Europe. Either way, it offers the prospect – over time – of a wider-ranging reciprocal arrangement in relation to the enforcement of judgments, including – potentially – the US[29].

Footnotes

[1] Except Denmark.

[2] At present limited, but set to expand.

[3] Switzerland, Norway and Iceland

[4] Regulation (EU) No 1215/2012.

[5] 2007 Lugano Convention.

[6] These include: (i) the 2005 Hague Convention on Choice of Court Agreements ("Hague 2005") - though this is limited to a single (though admittedly important) situation: judgments given pursuant to an exclusive jurisdiction clause in favour of the judgment/origin Court; (ii) the bilateral arrangements which underpin the Administration of Justice Act 1920 (which, since Brexit, applies to judgments to and from Cyprus or Malta); and (iii) the bilateral agreements which underpin the Foreign Judgments (Reciprocal Enforcement) Act 1933 (which, since Brexit, applies to judgments to and from Austria, Belgium, France, Germany and the Netherlands).

[7] Prior to Hague 2019, the main post-Brexit route for most EU countries.

[8] Art 16.

[9] Art 1(2).

[10] Art 1(1).

[11] Art 1(1).

[12] See Art. 2. It's a long list and is inspired by – but not identical to – the similar provisions under Brussels and Lugano conventions. Most relevantly to commercial and fraud litigation, the list of exclusions covers: arbitration and related proceedings, insolvency and related fields and matters relating to the existence of companies/their decisions (and other legal persons).

[13] Art 3(1)(b).

[14] By reference to Art 12(1)(b), which expressly countenances a default judgment

[15] See in two places: in Art 3(1)(b), which includes them within the scope of judgments when ancillary to judgment on a cause of action that falls within the scope of the Convention; and in Art 14(2), which makes an order for the payment of costs in enforcement proceedings itself enforceable as a judgment

[16] Art 3(1)(b).

[17] Art 4.

[18] These are excluded, because they are not judgments on the merits (according to the Report which preceded the Convention).

[19] Art 4(4)

[20] There are provisions – see below – which permit a court to delay or refuse enforcement of a judgment in certain circumstances if there are prior parallel proceedings pending before the courts of that state. But that is a relatively narrow provision. So it remains to be seen how much of an issue the "race to judgment" becomes – and to what extent anti suit injunctions, back on the table from a British perspective in a European context since the Brussels Recast and Lugano ceased to apply post-Brexit, can address it.

[21] If that were not obvious, Article 15 makes it explicit.

[22] The following covers only what is most likely to be important to the commercial/fraud litigator. There are further filters in relation to consumer contracts and employment matters, rights in rem in immoveable property, etc..

[23] Defined to include any of location of statutory seat, state under whose law it was incorporated, location of central administration or location of principal place of business.

[24] As summarised above, Hague 2005 relates to exclusive jurisdiction clauses. But it only applies when the said clause was agreed after Hague 2005 came into force in the relevant territory – for the UK that was only October 2015, or possibly even later, depending on the EU's ultimate decision on whether the correct date is when the UK rejoined Hague 2005 as a non-EU country post-Brexit.

[25] Art 7(2).

[26] All in Art 7.

[27] Art 10.

[28] Art 20

[29] The US has signed the Convention, but has so far taken no steps to ratify or implement it. It is – perhaps – difficult to see the present US administration being keen to do so; but action may come in the future.

Forum Conveniens in Multi-Party Cases

By Watson Pringle & James Mitchell

In multi-party jurisdiction challenges the forum conveniens analysis can raise difficult questions. This is heightened where, in both this and the foreign jurisdiction, defendants might be both located both in and out of the relevant jurisdiction. This article addresses two of these potential difficult questions that have been addressed in recent authority: (i) to what extent is a forum other than England available, if the foreign court's permission is required to serve out on a defendant; and (ii) how does one determine the natural and proper forum when there are multiple defendants, some of whom have been served in, as of right, and some of whom have been served out pursuant to ex parte orders?

Available Forum

Any putative foreign forum needs to be "available", in the sense that the challenger must "identify some other forum which does have jurisdiction to determine the dispute" (Unwired Planet International Ltd v Huawei Technologies (UK) Ltd [2020] UKSC 37; [2020] Bus LR 2422 at [96]). The Supreme Court did not need to address what sort of jurisdiction was required, though it is clear that an undertaking to submit to the jurisdiction will suffice (Lubbe v Cape plc [2000] 1 WLR 1545).

That point was addressed, albeit obiter, in Hindocha v Gheewala [2004] 1 CLC 502 (PC) at [22], with Lord Walker opining that "it is clear that an alternative forum is not available… unless it is open to the plaintiff to institute proceedings as of right in that forum".

The question of whether there is jurisdiction as of right is not difficult to apply where the alternative forum's applicable rules are binary, in that they clearly either give jurisdiction or they do not: see for example the French jurisdiction in UniCredit Bank GmbH v RusChem Alliance [2024] 3 WLR 659 at [102]. However, could it be said that jurisdictions which have similar rules to England & Wales are not "available", if a claimant would require permission of a court to serve out on a particular defendant – because service is not then "as of right"?

The rationale for such a rule might be said to be a need for some certainty as to the availability of the foreign forum: a court should not decline jurisdiction on the basis that there is some other more appropriate (or at least equally appropriate) forum, if there is a real chance that that other forum's courts might similarly decline jurisdiction. But the difficulty with that rationale is that (at least for forums with rules similar to ours) the same could be said even of defendants resident in those jurisdictions, who are a paradigm example of those who can be served "as of right": such defendants might equally ask the foreign court to stay proceedings on (similar) forum non conveniens grounds.

This issue has been recently addressed in Magomedov v TPG Group Holdings (SBS) LP [2025] EWHC 59 (Comm), where the claimants sought to rely on Hindocha to contend that Cyprus (which had similar rules on jurisdiction to England & Wales) was not an available forum. This was because not all defendants were located in Cyprus or had undertaken to submit to the jurisdiction of the Cypriot courts (so the Cypriot courts would have to decide whether service out was to be permitted). Bright J considered Hindocha and Lubbe v Cape and rejected the submission that the relevant question was whether the defendants could be served there 'as of right', deciding instead that the relevant question was that identified by Lord Hope in Lubbe v Cape – namely "has it been made plain that another forum is open to the parties" ([140], [144]). He thought that the distinction between those defendants who could be served in Cyprus and those who could be served with Cypriot proceedings outside Cyprus with the permission of the Cypriot courts was only that different parties bore the burden of establishing the appropriate forum; and that was not a sufficient basis to rule that the jurisdiction was unavailable in the latter case, while being available in the former ([142]).

We think the decision not to follow the obiter remarks in Hindocha is correct. That leaves the question of how one "makes it plain" that "another forum is open". The answer seems to be that defendants will need to prove on the balance of probabilities that the foreign court will exercise jurisdiction (per Arnold LJ, obiter, in Tesla Inc v Interdigital Patent Holdings Inc [2025] EWCA Civ 193), which may mean proving that an application for service out is more likely than not to be successful. However, where there is any residual doubt, and a real possibility the foreign court might nonetheless decline jurisdiction, then the English court should be asked only to stay proceedings subject to a liberty to apply, pending the foreign court's decision on the question: Magomedov at [146].

The Natural and Proper Forum

As mentioned above, the burden falls differently as between service in and service out defendants. Where a defendant challenges an order for service out of the jurisdiction it is the claimant who has to show that England is the natural and proper forum for the dispute. On an application for a stay on forum non conveniens grounds, it is for the defendant to show that England is not the natural and proper forum. In a case where England and another jurisdiction are equally appropriate, and there are service out and service in defendants, abstract logic might therefore be said to dictate that the challenge of the service out defendants should succeed, and the stay application of the service in defendants should fail (as was suggested, obiter, by Arnold LJ in Tesla Inc v Interdigital Patent Holdings Inc [2025] EWCA Civ 193).

However, in a multi-party case, for example one involving an allegation of conspiracy, the question the Court is really seeking to answer is: what is the proper forum for the trial of the dispute as a whole, i.e. against all of the defendants, it being ideal for the claims against all of the alleged conspirators to be tried at the same time? It is not obvious that burdens are of any particular assistance to the Court in answering that question, as Bright J recently held in Magomedov at [121(2)]. So how does one approach the question of appropriate forum in such a case?

The Supreme Court said in Lungowe v Vedanta [2020] AC 1045 at [75]-[84] that the risk of split proceedings (i.e. if proceedings would in any event proceed here against one or more 'service in' defendants, but the court were to throw out the case against 'service out' defendants in favour of another available jurisdiction) is a relevant and important factor, but not a determinative one. That is especially in circumstances where the other forum was also available for suing the service in defendants, such that the risk results from the claimant's choice to sue the relevant anchor defendant in England. (See further Abu Dhabi Commercial Bank v Shetty [2022] EWHC Comm 529 (Comm) per HHJ Pelling KC, where the risk of split proceedings in a 'choice' case was described as "a relatively weak point".)

The issue was authoritatively considered by the Court of Appeal in Limbu v Dyson Technology Ltd [2024] EWCA Civ 1564. There, Popplewell LJ said that "In applying these connecting factors to cases involving multiple defendants, their relative status and importance in the case should be taken into account, such that greater weight is given to the claims against those who may be described as a principal or major party or chief protagonist".

In support of that the Court cited JSC BTA Bank v Granton [2010] EWHC 2577 (Comm) at [28]) where Christopher Clark J had said that "A decision that permission should be granted to serve the protagonist out of the jurisdiction because the minor player is domiciled within the jurisdiction would indeed allow the tail to wag the dog." In other words, adopting a common-sense approach, the position in relation to forum of an anchor defendant should only be determinative if the anchor is a central figure in what is alleged.

Similarly, in Erste Group [2015] EWCA Civ at [149] the Court said that one should not focus, when considering appropriate forum, on technical factors but rather needs to stand back and asking the practical question where the "fundamental focus" of the litigation was to be found.

Further, in AON UK Limited v Howden Group Holdings Limited [2025] EWHC 1148 (KB) (which did not cite Limbu) Master Dagnall noted the potential for circuity if the answer for one set of defendants answered it for the other and so decided to consider the matter "holistically" ([618]-[620]).

Those authorities appear to have a common thread. However, a different line was taken in Al-Aggad v Al Aggad & ors [2024] EWHC 673 (Comm), where Cockerill J held that the proper approach was to look at the position first in relation to the service in Defendants, who have been served here as of right, then look at the service out Defendants against the background that the proceedings are going to proceed here against the service in Defendants in any event. It might be said that that unfairly skews the forum debate in the claimant's favour.
Each forum case, of course, turns heavily on its own facts, and there is only so much that can therefore be said about the proper approach by way of universally applicable principle. Al-Aggad can also, perhaps, be explained as a case where the alternative forum (Jordan) was in reality being put forward as 'neutral territory' or 'third option', which, as the Court of Appeal held in Macsteel Commercial Holdings (Pty) Ltd v Thermasteel (Canada) Ltd [1996] C.L.C. 1403 (CA), does not make it the appropriate forum, if in reality it has only a tenuous connection to the dispute.

What is certain is that, given the prevalence of multi-party (and, often, conspiracy) disputes connected to England only by a would-be anchor defendant, this is unlikely to be the last time these issues crop up.

Foreign judgments as the basis for bankruptcy petitions: Servis-Terminal LLC v Drelle

By Promit Chatterjee

In its recent judgment in Servis-Terminal LLC v Mr. Drelle [2025] EWCA Civ 62, the Court of Appeal (Newey, Popplewell, Snowden LJJ) upheld an appeal against the decision of Richard J, who, in turn, had upheld a bankruptcy order made by ICC Judge Burton. The underlying bankruptcy petition was based on an unpaid judgment debt arising out of proceedings before Russian courts concerning alleged breaches of director's duties, upheld on appeal by the Russian Supreme Court.

The Court of Appeal's Reasoning

The primary ground of appeal before the CoA related to whether a bankruptcy petition could be founded on a foreign judgment that had not yet been registered or recognised in England through separate proceedings (a non-recognised/non-registered foreign judgment, "non-RFJ"). The remaining grounds, all of which related to whether the underlying alleged debt was substantially disputed, were not addressed in the judgment, given the CoA's conclusion on the first ground.

As regards the first ground, Newey LJ (Popplewell, Snowden LJJ concurring), held that an obligation to make a payment imposed by a non-RFJ did not constitute a "debt" for the purpose of s267 of the Insolvency Act 1986 ("IA"). Newey LJ's reasoning was as follows:

> A non-RFJ could not be directly enforced/executed in England without the judgment creditor:
>
> > first obtaining an English judgment granting common law recognition of the foreign judgment; or
> >
> > relying on specific English registration/enforcement mechanisms set out in statutory or treaty provisions applicable to judgments from relevant jurisdictions.
>
> The common law "revenue rule" (i.e. taxation is construed as an exercise of sovereign power and, therefore, a bankruptcy petition cannot be presented on the basis of a foreign tax liability) supported the above contention, given that a non-RFJ, like a foreign tax liability, arises out of an exercise of sovereign power.
>
> A judgment from a jurisdiction subject to the statutory registration schemes, such as those set out under the Foreign Judgments (Reciprocal Enforcement) Act 1933 or the Administration of Justice Act 1920 (and recently expanded in scope by the coming into force in the UK of the Hague Convention 2019 – see further article (above), cannot be enforced prior to it being registered accordingly. Therefore, permitting a bankruptcy petition to be brought in respect of a non-RFJ would put its holder in a better position than a holder of an unregistered foreign judgment, which is subject to these statutory regimes.

Snowden LJ (Popplewell LJ concurring) further reasoned that (a) collective and (b) individual enforcement mechanisms (e.g., charging order applications) in respect of foreign judgments ought to be subject to the same conditions of recognition and registration through prior proceedings.

It is unclear whether Drelle will have a wider chilling effect on enforcement strategies through insolvency proceedings generally or whether its effect will be limited to cases that mirror the factual matrix in Drelle (ie, a petition based on a court judgment delivered against an individual but not in respect of a liquidated debt claim). I have addressed a few of those uncertainties below.

Bankruptcy Proceedings

In case the non-RFJ is in respect of an accrued liquidated debt claim, parties potentially still may be able to obtain a bankruptcy order against an individual relying on IA s267(2)(b), provided the court accepts that the source of the enforceability of the liquidated debt would not be the foreign judgment but the underlying contract, invoice, etc. (see, Vendort Traders v Evrostoy Grupp [2016] UKPC 15 at [11]). In such a case, the court will need to be independently satisfied during

the bankruptcy proceedings that the liquidated debt is not substantially disputed (in that respect, the foreign judgment is likely to be of persuasive evidentiary value depending on the quality of its reasoning).

Winding Up Proceedings

Despite Drelle indicating that a non-RFJ does not amount to an accrued debt, a holder of a non-RFJ should nevertheless have standing under IA s124(1) to bring a winding up petition against the judgment-debtor, given that: (a) prospective/contingent creditors have standing under IA s124(1) to bring winding up petitions; and (b) a holder of a non-RFJ is very likely to be construed as a prospective (or at least contingent) creditor to the extent that the insolvency court finds that the non-RFJ is capable of recognition (which was, in any event, required for non-RFJ-based petitions prior to Drelle). However, the non-RFJ holder would also need to satisfy one of the grounds under IA s122(1) to obtain a winding up order.

It is uncertain whether, in respect of a non-RFJ, the court will grant a winding up order based on the ground of inability to pay debts (IA s122(1)(f)). It is properly arguable that such an order ought to be granted under IA s122(1)(f) if the court holds that: (a) the non-RFJ is capable of recognition and is therefore, a prospective debt; and (b) there is sufficient material in the petition to infer a current inability on the part of the judgment-debtor company to pay its debts irrespective of the non-RFJ (see, Securum Finance v Camswell [1994] BCC 434 at 435-436).

In the alternative if the court finds that (a) the non-RFJ holder is a prospective/contingent creditor and/or (b) there is no evidence of the company's inability to pay its debts (excluding the non-RFJ), the court may still grant an order under the "just and equitable" ground (IA s122(1)(g)) if the non-RFJ holder can produce evidence that would objectively justify the apprehension that the company would be unable to repay the foreign judgment debt following its recognition (see, Re A Company [1987] 3 BCC 575 at 585). In any event, winding up petitions under the just and equitable ground have further elements of complexity and would invariably not be disposed of in the usual winders list, so may not be an attractive option for non-RFJ holders.

Arbitral Awards

Post-Drelle, there has at least been one decision from a Privy Council jurisdiction, Re Sin Capital [2025] CIGC (FSD) 18, where the court made a winding up order based on a foreign award, after expressly drawing counsel's attention to Drelle, but without commenting on the (in)correctness of the ratio in Drelle. However, it is still uncertain whether Drelle will impact insolvency proceedings based on foreign arbitral awards in England and other common law jurisdictions, where both the enforcement and seat jurisdictions are New York Convention ("NYC") States. This is because insolvency orders based on foreign awards from NYC seats arguably can be distinguished from Drelle on the basis that such awards, unlike foreign judgments, are usually statutorily "recognised" as binding in NYC States (see, for example, s 101(1) of AA 1996). However, the counterargument (and, in my view, the stronger one) is that the Drelle ratio implies that insolvency proceedings cannot be founded on the ground of inability to pay a debt prior to obtaining the court's leave to enforce a foreign arbitral award that was not made in respect of a liquidated debt claim. This is because, despite benefiting from the statutory presumption of recognition, NYC awards can nevertheless be refused enforcement by courts if the award-debtor successfully raises objection(s) under any of the statutory grounds modelled on NYC Art V. A similar scenario played out in Re Pacific China Holdings (HCVAP 2010/007), where a winding up order made by the BVI Commercial Court based on a foreign award, was set aside on appeal by the ECSC Court of Appeal (BVI) in light of substantial enforcement-related objections raised by the award-debtor.

Conclusion

To the extent that any non-RFJ holder would prefer certainty over the risks associated with pursuing insolvency proceedings post-Drelle (albeit that the risks come with a potential upside of a relatively faster and cheaper recovery process), they should ideally obtain statutory registration or recognition of the relevant judgment through separate Part 7 proceedings before commencing insolvency proceedings to recover the judgment debt. They can potentially mitigate the associated time and costs excesses by seeking a summary judgment in the same terms as the foreign judgment, shortly after the Part 7 Claim Form is issued. Parties should also consider whether they need to apply for a freezing injunction as a safeguard in case there is a risk of dissipation of assets in the meantime.

On 1 October 2025, the Supreme Court granted Servis-Terminal permission to appeal against the CoA decision. Therefore, we may not have yet heard the last word from the English courts on this issue.

Case-Law Digest

By James Mitchell

Jurisdictional Gateways

Magomedov v TPG Group Holdings (SBS) LP [2025] EWHC 59 (Comm): In addition to its consideration of important multi-party forum issues (see above), the case provides a summary of – and clear line through – the case-law on the 'relating to a contract' gateway, affirming that: (i) ordinarily the relevant defendant would be a party to the contract; (ii) the claim must assert a contractual right or a right that has arisen as a result of the non-performance of a contract; and (iii) the contract must not be an incidental product of the conduct giving rise to the claim – it was not enough that a claim simply mentions an English law contract ([94]-[119]). David Mumford KC and Watson Pringle of Maitland acted for D19 in the jurisdiction challenge, and James Mitchell acted in the consequentials hearing.

Iankov v Kantchev [2025] EWHC 495: Cockerill J (obiter) decided that an injunction to transfer shares in an English company did not fall within Gateway 2, as the act of transfer could take place anywhere in the world ([86]-[92]). Cockerill J also dismissed a novel application of Gateway 4A (a further claim against the same defendant arising out of the same or closely connected facts), on the basis that the defendants were defendants in existing proceedings continuing in England ([138]-[149]). The Judge also rejected a related request to consolidate those claims which, whilst possible in exceptional cases, would usually be abusive if its intention was to sidestep jurisdictional hurdles ([150]-[162]).

Jurisdiction and Arbitration Agreements

Clifford Chance LLP v Societe Generale S.A. [2025] EWCA Civ 14: C1 (the London office) and C2 (the French office) claimed negative declarations on liability for alleged professional negligence. The Court of Appeal held C1 was not a party to a French jurisdiction clause. C2 was a party to that jurisdiction clause, but the claim in England was nonetheless permitted because there were strong reasons to allow it to be determined in the same proceedings as those against C1, being the real target of the relevant allegations ([63]-[68]).

Hipgnosis SFH 1 Limited v Manilow & ors [2025] EWCA Civ 486: The Court of Appeal refused to stay English proceedings when an asymmetric jurisdiction clause afforded the claimant no choice as to where to sue (only in England), and the defendant had subsequently (pursuant to that clause) issued proceedings in Los Angeles. The risk of irreconcilable judgments was of the defendant's own making ([55]-[70]). The Court of Appeal did not need to address the question whether this asymmetric clause fell within the Hague Convention on Choice of Court Agreements 2005, which will be an issue for another occasion ([72]). Edmund Cullen KC of Maitland acted for the Claimant.

Destin Trading Inc v Saipem SA [2025] EWHC 668 (Ch): A settlement agreement contained a jurisdiction clause, settling claims where the underlying contract had an arbitration clause. A claim was made pursuant to the jurisdiction clause to set aside the settlement and pursue settled claims. A stay in favour of arbitration was refused because the settlement jurisdiction clause should be construed as having a superseding effect from the original dispute resolution clause ([35]-[39]).

Okuashvili v Ivanishvili [2025] EWHC 829 (Ch): A clause headed "Governing law and jurisdiction", which was only a jurisdiction agreement, was relevant to a finding an express choice of law in those contracts based on the choice of jurisdiction and the heading of the clause itself being relevant factors ([47]-[49]). Watson Pringle and Thomas Munby KC of Maitland acted for Mr Ivanishvili and Mr Partskhaladze, who were Defendants to the claims, respectively.

Forum Conveniens / Forum Non-Conveniens

Tesla Inc v Interdigital Patent Holdings Inc [2025] EWCA Civ 193: Arnold LJ (obiter, in a dissenting judgment) addressed practical issues on the availability of foreign forums ([119]-[129]) identifying that (i) the defendant bore the burden on the balance of probabilities to identify an available foreign forum for service in and service out cases; and (ii) the unavailability of a remedy in a foreign forum did not make the forum unavailable, but was an issue for whether substantial justice could be done in that forum. Arnold LJ also applied the competing and opposite burdens, in service in and service out claims respectively, to show which was the most appropriate forum. Having found that both England and a foreign forum were equally appropriate, the service in claims would have continued but not the service out claims ([155], [217]).

Xenfin Fund 1 Trading Limited v Gfg Limited [2025] EWHC 172 (Ch): Considers the principle that where a foreign limitation period has expired during English proceedings, it can be unjust to require proceedings to be commenced again in a foreign court if it was reasonable to commence proceedings in England in the first place ([73(vi)], [78]). Oliver Phillips of Maitland acted for one of the Defendants.

Da Silva v Brazil Iron Limited [2025] EWHC 606 (QB): Despite finding Brazil to be the forum with the more real and substantial connection, Bourne J found that there was a real risk the claimants could not obtain substantial justice in Brazil due to the inability to obtain suitable litigation funding in Brazil (because of the low value of the individual claims), and that the case was sufficiently exceptional to take that into account ([106]-[134], [146]-[152]).

AON UK Limited v Howden Group Holdings Limited [2025] EWHC 1148 (KB): A reminder to defendants that if they wish to contend that certain issues will arise in the litigation (affecting forum) they needed to set that out and adduce evidence of it, rather than simply making speculative submissions ([486]). The Court considered the risk of irreconcilable judgments, as one claim had to be commenced under Brazilian Law in a Labour Court (which the Judge stayed), but the remaining claims would risk irreconcilable judgments if they were heard in different Brazilian courts or in England, and could continue in England ([618]-[620], [621]-[636]). There were also obiter observations about the possibility (in certain circumstances) of different governing laws applying in tort for the same act where damage was suffered by different parties in different places under Rome II ([525]).

Haroun v Quatar National Bank [2025] EWHC 1588 (Comm): Foxton J (obiter) did not accept a submission that a claimant could not obtain substantial justice in Qatar, even though they had been convicted in absentia, because it was possible to litigate there without being present on the basis of evidence adduced in that case ([64]-[65]). Foxton J also rejected the contention there would be any political interference in the case ([66]).

Insolvency and Jurisdiction

Mobile Telecommunications Company KSCP v HRH Prince Hussam Bin Saud Bind Abdulaziz Al Saud [2025] EWCA Civ 681; [2025] EWHC 85 (Ch): The Court of Appeal refused permission to appeal following a trial finding that the debtor was not resident in England at the relevant time (despite five interim findings of a good arguable case he was (HC at [12])). The Court of Appeal explained the burden did not shift to the debtor to prove he had abandoned his residence if they had previously been resident in the jurisdiction. It was a question of fact whether an inference could be drawn from that past residence as to the debtor's residence at the relevant time (CoA [41]-[46]).

Almeqham v Al-Sanea [2025] EWHC 322: C (foreign liquidation trustees of D1 and a related company) had obtained recognition under the CBIR 2006 and made a claim that certain properties were held on trust for D1 or that related company. Before bringing that claim C needed to make an application under Article 21(1)(e) and (2) of Schedule 1 to the CBIR; and without it there was no serious issue to be tried on that claim ([47]-[71]). Richard Morgan KC and Duncan McCombe of Maitland acted for the Second to Sixth Defendants.

Péretié v Eden Farm SRL [2025] EWHC 1349 (Ch): The court gave guidance on when and how to challenge jurisdiction before the issue of a bankruptcy petition. The correct approach was not to apply to set aside the statutory demand, but rather to make an application for an anti-suit injunction to restrain proceedings, either on its own or at the same time as a set aside application on conventional grounds ([15]-[30]).

Bridging Finance Inc v Lyons [2025] EWHC 1694: Considered the jurisdiction for bankruptcy petitions where a debtor has carried on business in the jurisdiction within the last three years, including a detailed survey of the authorities where individuals conducted business through various companies ([23]-[34]). As the relevant companies were not shown to have been incorporated or promoted within the three-year period, Re Brauch [1978] Ch 316 was distinguished, and the alleged general business as a serial entrepreneur was not carried out in the relevant period ([47]-[52]). However, renovating and renting a property in the debtor's own name amounted to carrying on a business in that period ([53]-[60]).

Procedural aspects of jurisdiction and service

Almeqham v Al-Sanea [2025] EWHC 322: (See above for CBIR issue). In an obiter discussion the Judge held that a service address given pursuant to the Economic Crime (Transparency and Enforcement) Act 2022 (the act requiring registration of details of beneficial owners for foreign companies owning UK property) could be used to serve proceedings within the jurisdiction, as a service address can under s.1140 Companies Act 2006 ([109]-[127]).

Alesayi v Bank Audi S.A.L. [2025] EWHC 440 (KB); and [2025] EWHC 1033 (KB): The first reported decision is a recent example where an order for disclosure was made in support of a pending jurisdiction challenge, with Dias J rejecting a submission that the test for disclosure required "exceptional circumstances" and affirming a two stage test of whether (i) the claimant has a prima facie case for there being jurisdiction; and (ii) whether disclosure was reasonably necessary for the just disposal of the jurisdiction application ([23]-[58]). The second decision was the substantive hearing, which concerned statutory jurisdiction for consumer contracts, in respect of which permission to appeal has been granted by the Court of Appeal.

Abram & Ors v Union des Associations Europeens de Football (UEFA) [2025] EWHC 483 (KB): Turner J addressed a jurisdiction challenge on the basis that the proceedings would raise issues of foreign act of state (and other non-justiciable issues). At the jurisdiction stage the court does not have the benefit of a defence setting out the particular acts and how the doctrine is said to apply ([67], [106]). Accordingly, if the claimant has no arguable case on the point a jurisdiction challenge will succeed, but if it is arguable the doctrine would not defeat the claim the defendants can revisit the application at a substantive hearing once pleadings are closed ([15]-[17]).

Mohammad v Bin Tarraf [2025] EWHC 776 (KB): The registration of an Ontario default judgment under the Foreign Judgment (Reciprocal Enforcement) Act 1933 was set aside, as the Ontarian court had no jurisdiction over the defendant. Section 4(1)(a)(iii) requires registration to be set aside if the debtor as a defendant did not receive notice of those proceedings, and the Court held this meant actual notice ([19]). The court also warned that a duty of full and frank disclosure applied to applicants for registration of foreign judgments under the Act, and found breaches additionally justifying the setting aside of the registration order ([41]-[46]).

Okuashvili v Ivanishvili [2025] EWHC 829 (Ch): (See elsewhere in this note for governing law issues). Breaches of full and frank disclosure in relation to limitation defences under foreign law justified setting aside an order serving out of the jurisdiction, and Rajah J held that ignorance of the relevant limitation period under foreign law was not sufficient when it was readily identifiable under the relevant Civil Code ([87]-[93]). The Court also rejected an argument that the limitation periods were extended under the foreign law as "continuing torts", in part because it was not pleaded or addressed in evidence ([72]-[73]). Watson Pringle and Thomas Munby KC acted for Mr Ivanishvili and Mr Partskhaladze.

Mengrani v Mohamed [2025] EWHC 1131 (Ch): Although a claimant has the burden of establishing a defendant's usual or last known residence under CPR r.6.9, Master Shuman attached significance in his assessment to the absence of evidence from the defendant personally as well as an absence of documentary evidence supporting the defendant's contended place of residence ([35]-[39]). There was also a short obiter consideration of service under s.1140 Companies Act 2006, with the Master concluding that it did not extend to permit service on the defendant for a claim in their capacity as a trustee ([52]). I consider that aspect may be wrongly decided, as there is a long line of authority permitting service under s.1140 on directors for claims in their individual capacity, and there is no basis to treat a director who is a trustee any differently.

Alliance Automotive Procurement Limited v Auto Zatoka Spolka Z Ograniczona Odpowiedzialnoscia [2025] EWHC 1697 (Ch): Errors in the response pack served with the claim form did not mean the service effected was invalid, indeed a response pack was not required for there to be valid service ([30]-[35]). Nor did the technical errors in the response pack justify an order striking out the claim in the alternative ([55]).

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