



HFW

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HFW ARREST PACK

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CONTENTS

01	Overview	2
	Introduction	3
02	England & Wales	4
	Arresting a ship	5
03	Singapore	8
	Arresting a ship	9
04	Europe	12
	European attachment orders	13
05	Contacts	16
	Contributors	17

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01

OVERVIEW



INTRODUCTION

This pack analyses two of the most common means through which claimants operating in the shipping and commodities spaces seek to (1) obtain security for bringing a claim and (2) enforce their judgments and awards: ship arrest (and sale), and attachments.

Section two focuses on the regime governing the arrest of ships in England and Wales, providing a detailed breakdown of: the grounds under which an arrest claim may be brought (including of sister-ships); the requirement (or lack thereof) to provide security/counter-security when seeking an arrest/the release of an arrest; the procedure surrounding the sale of an arrested ship; and the limited grounds under which wrongful arrest may be claimed. Section three focuses on the same issues from a Singaporean perspective. These jurisdictions were selected because they are relatively claimant friendly, they have developed maritime law and legal systems (allowing claimants to be able to predict, with a relative degree of certainty, how their arrest applications are likely to be considered, in typical circumstances) and because these jurisdictions are some of the busiest in the world when it comes to commercial freight traffic and are often the jurisdictions claimants choose, when seeking an arrest.

Section four looks at attachments. We consider the relative ease with which attachment orders handed down in the UK courts may be enforced in other EU Member States (Member States) and vice versa, via the 2015 EU Recast Brussels I Regulation (the Recast Regulation). In particular, we discuss the process whereby arrest and attachment orders obtained through the Dutch courts may be enforced in other Member States. We focus on Holland because it has perhaps the most liberal laws within the EU, when it comes to what must be proven to secure an arrest/attachment.

Finally, in section four, we also consider the potential effect of Brexit on the reciprocal enforcement of arrest and attachment orders between the courts of the UK and Member States, concluding that the effect is likely to be minimal.

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02

ENGLAND & WALES



ARRESTING A SHIP

Why arrest a ship?

A key consideration for any claimant is what assets are available to secure a claim and to enforce against, should the claim be successful. In the maritime sphere, the most valuable/only tangible assets held by many defendants are their ships. This makes obtaining security more complex, as ships can travel from country to country to escape the jurisdiction of the courts.

The most effective option can often be to arrest a ship on arrival into port, in order to obtain security or to enforce a judgment/arbitration award. However, the speed with which a vessel can be arrested and any subsequent security or sale obtained, is dependant on the system of rules and laws of the jurisdiction where the arrest is sought.

English law is very clear on the circumstances in which a claimant may arrest a vessel and the relevant criteria for arrest. Similarly, the Admiralty courts are staffed by maritime law experts who are on hand to help navigate arrest applications.

Grounds for arrest

An exhaustive list of the grounds ¹under which an arrest claim² may be brought are set out in statute³. Some of the relevant grounds are distinctly 'maritime' in nature e.g. a vessel may be arrested in support of a claim, *inter alia*:

- For damage to goods carried in a ship
- For damage received or done by a ship
- In respect of a mortgage of or charge on a ship
- In the nature of pilotage in respect of a ship
- In the nature of towage in respect of a ship

Other grounds are more 'commercial' e.g. a vessel may also be arrested:

- In support of any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship
- By reason of security for the purposes of arbitration or other proceedings⁴, regardless of where such arbitration is seated/proceedings are based

Procedure

The procedural rules governing the bringing of an arrest claim are found in Part 61.5 of the Civil Procedure Rules (the CPR), Practice Direction 61 (PD61) and the Commercial Court Guide⁵ (incorporating The Admiralty Court Guide⁶).

¹ Notable grounds not included on this list are claims for insurance premiums and for legal costs.

² Such claims are known as admiralty claims in rem, that is, claims made against a vessel itself, in the Admiralty Court. This is the only jurisdiction under which an arrest claim may be brought in England and Wales.

³ Principally sections 20(2) (a)-(s) of the Senior Courts Act 1981, which implements the terms of the Brussels Convention Relating to the Arrest of Seagoing Ships, 1952, to which the UK is a signatory.

⁴ Pursuant to Section 26 of the Civil Jurisdiction and Judgments Act 1982.

⁵ The most current version at the time of printing is The Commercial Court Guide, Tenth Edition, 2017.

⁶ The Admiralty Court, as of 2 October 2017, sits within the newly formed Business and Property Courts. The Business and Property Courts Advisory Note is therefore also relevant. It provides useful guidance and is described as "likely to be updated on a regular basis".

To commence a claim, the target vessel must be situated within the territorial jurisdiction of the court i.e. the territorial waters of England and Wales, as opposed to those of Northern Ireland or Scotland⁷. English law does not distinguish between English and foreign-flagged vessels or "convention"⁸ or "non-convention" vessels, for the purpose of arrest. The claimant must file an Admiralty Claim Form (Form ADM4) and an application for arrest. These may be issued and served on the vessel at the same time or one after the other. The fee for issuing an Admiralty Claim Form varies: for claims valued at between £10,000 and £200,000 it is 5% of the value of the claim; for claims valued at over £200,000 it is capped at £10,000. To issue the arrest warrant there is an additional fee of £225. The Claimant will need to provide details of the ship's location and port of registration.

The claimant must also request a search of the Admiralty Register⁹ to identify any cautions against arrest in respect of the target vessel. A warrant for the vessel's arrest is issued by the Admiralty Marshal and then physically served by him or her, or his/her substitute (e.g. a bailiff), on the target vessel.

Security

The owner of the defendant vessel (or a third party) may provide security in order for an arrested vessel to be released. This can take the form of a payment¹⁰ to the court or the issuing of a guarantee or letter of undertaking (LOU) (e.g. from the vessel owner's P&I club) acceptable to the claimant.

Once security is agreed a release can be achieved easily. A request for release must be filed with the Admiralty Marshal and an undertaking provided to be responsible for his/her costs in effecting the release.

A claimant can make an application that property be arrested or re-arrested to obtain further security in support of an underlying claim¹¹.

Counter-security

Unlike in some other jurisdictions, a claimant is not required to provide counter-security to the court for an arrest (i.e. an amount of money or an undertaking to provide a certain amount of money to satisfy a potential future damages claim brought by a defendant for wrongful arrest). A claimant is only required to provide a much more limited undertaking, to cover the expenses of the Admiralty Marshal. Typically, this undertaking is provided by the solicitors instructed to make the arrest. Sometimes it will be necessary for the claimant to pay the expenses incurred as a result of the arrest, such as the berthing charges applicable whilst the vessel is detained; these charges can be added to the overall claim and recovered from an eventual sale of the vessel.

Arrest of a sister-ship

For a variety of reasons, it may not be possible for a claimant to physically arrest a vessel owned by the defendant against which they are bringing a claim. For example, the vessel may be located in a jurisdiction outside of England and Wales where arrest is not possible or is very difficult. In such circumstances, so long as certain criteria are satisfied, it is possible to arrest a different vessel which is

⁷ The Civil Jurisdiction (Offshore Activities) Order 1987.

⁸ The relevant convention here is the Convention Relating to the Arrest of Seagoing Ships (Brussels, 1952).

⁹ The admiralty register is accessible for a fee depending on the amount of the claim: <https://www.gov.uk/guidance/take-a-maritime-or-shipping-dispute-to-the-admiralty-court#pay-the-court-fee>

¹⁰ There is no set amount required, but a claimant will normally seek a "reasonable amount", which is usually calculated to be the claimant's best arguable case, plus interest and costs. The court will only become involved in assessing the appropriate reasonable amount of security to be provided if this cannot be agreed between the parties.

¹¹ A claimant cannot seek security in excess of its best arguable case, including interest and costs; in practice this means security is likely to be limited to the value of the vessel that is to be arrested/is arrested.

connected to the target vessel, known as a "sister-ship. Timing is key as the cause of action must arise in relation to the defendant ship when the owner of the defendant ship was either:

- The owner of the sister-ship
- The demise charterer of the sister-ship
- The bareboat charterer of the sister-ship
- Otherwise in possession or control of the sister-ship

Similarly, there must not have been a change in ownership of the sister-ship in the interim period between the cause of action arising (in relation to the defendant ship) and the arrest application.

In contrast, maritime liens allow a claimant to arrest a vessel despite a change in its ownership, but these may only be brought in very limited circumstances¹², and not in support of more general "commercial" claims. It is not possible to arrest ships in "associated ownership" in the same way that is permitted in other jurisdictions, e.g. in South Africa¹³.

Sale of a ship

An application can be made to the Admiralty Court by any party for the sale of a vessel under arrest¹⁴. The application must be served on all relevant parties, including those who have obtained judgment against the vessel or who have been granted cautions against arrest.

When an order is to be made for the sale of a vessel, its value must first be appraised by the Admiralty Marshal¹⁵ with the help of an appointed shipbroker. The vessel is then advertised by the Admiralty Marshal and sold to the highest bidder. The Admiralty Officer acts as an impartial officer of the court and so rarely deviates from the standard process, even where a claimant is able to source buyers at prices which are ostensibly the best possible in the market. A sale at below the Admiralty Marshal's appraised value will only be allowed with leave of the Admiralty Court, which is only provided in exceptional circumstances¹⁶.

The Admiralty Marshal's expenses (of arrest, appraisal and sale) and the Admiralty Court's commission (1% for the first £100,000 then 0.5% for the remainder value of the vessel) rank as first priority from sale proceeds. A vessel sale made in this way is free from any encumbrances or liens and is made with good title.

Wrongful arrest

It is possible to bring a damages claim for wrongful arrest, however, the required criteria are difficult to satisfy; a defendant must prove that the claimant brought the application in bad faith or that there was gross negligence.

¹² A maritime lien can only be exercised in support of a claim for salvage; unpaid crew wages; Master's wages and disbursements; damage done by a vessel; and bottomry and respondentia.

¹³ The South African courts recognise the practical difficulties often involved in proving legal ownership and have shown a willingness to authorise a vessel's arrest where it is deemed to be an associated vessel on the balance of probabilities. To make such a finding, the South African courts are prepared to draw reasonable inferences from surrounding and circumstantial evidence in a manner in which the courts of England and Wales are not.

¹⁴ The relevant procedure is prescribed in CPR 61.10

¹⁵ Per *Bank of Scotland Plc v. Owners of the Union Gold (The Union Gold)* [2013] EWHC 1696 (Admlty).

¹⁶ See *The Union Gold*, where an urgent sale was agreed to protect 21 jobs and in circumstances where the vessel was unlikely to attract many buyers on the open market.

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SINGAPORE



ARRESTING A SHIP

Singaporean maritime law draws on English law concepts; however, the law governing arrest is different in several material aspects. Singapore is not a signatory to the most important international conventions¹⁷ dealing with arrest, which has caused further divergence.

The Singaporean Admiralty courts are sophisticated and experienced in dealing with arrest applications and have clear rules governing when an arrest is possible and what must be proved in order for an arrest to be obtained.

Grounds for arrest

An exhaustive list of the grounds under which an arrest claim¹⁸ may be brought are set out in statute¹⁹ and these are broadly modelled on the applicable grounds under English law.

Some of the relevant grounds are distinctly 'maritime' in nature e.g. a vessel may be arrested in support of a claim:

- For damage to goods carried in a ship
- For damage received or done by a ship
- In respect of a mortgage of or charge on a ship
- In the nature of pilotage in respect of a ship
- In the nature of towage in respect of a ship

Other grounds are more 'commercial' e.g. a vessel may also be arrested:

- In support of any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship

However, the Singaporean courts have interpreted the boundaries of some of these categories in quite a restrictive fashion, in comparison to the English courts. For example, the Singaporean High Court has held that "*any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship*" does not encompass claims relating to bookkeeping and administrative fees²⁰ or management fees²¹ incurred by a vessel's managers and/or agents. Similarly, the Singapore High Court has recently confirmed²² that, unlike in England and Wales, a vessel cannot be arrested in aid of foreign court proceedings (although a vessel can, like in England and Wales, be arrested in order to obtain security in aid of international arbitrations).

Procedure

The procedural rules governing the bringing of an arrest claim are found predominately in the Rules of Court.

¹⁷ The Brussels Convention Relating to the Arrest of Seagoing Ships 1952, the International Convention on Salvage 1989 and the Geneva Convention on the Arrest of Ships 1999.

¹⁸ Such claims are known as admiralty claims in rem, that is, claims made against the vessel itself.

¹⁹ Principally Section 3(1) the High Court (Admiralty Jurisdiction) Act (HCAJA).

²⁰ The High Court's rationale for this decision (see *The Reecon Wolf* [2012] 2 SLR 289) was that such fees are incurred on behalf of the ship-owner, rather than the vessel itself and so are therefore out of scope.

²¹ The High Court ruled out management fees (see *The 'PWM Supply' ex 'Crest Supply I'* [2016] 4 SLR 407) because the relevant provision makes no reference to remunerative elements (such as fees or commission) and so management fees were held not to fall within the category of disbursements envisaged.

²² *DSA Consultancy (FZC) v. The "Eurohope"* [2017] SGHC 218 (The Eurohope).

To commence a claim, the target vessel must be situated within the territorial waters of Singapore and within the port limits of Singapore. In order to secure an *in rem writ*²³ from the court (which commences an admiralty claim), the writ needs to be endorsed and filed with the claimants' statement of claim (or at least a statement of the nature of its claim). A claimant must also file a warrant of arrest, a request to issue this warrant of arrest, and an affidavit in support of its application. The fee for issuing a writ varies from S\$500 to S\$1,500, depending on the value of the claim.

The claimant must also perform what are known as "caveat searches", in order to confirm that there are no existing restrictions preventing the arrest of the vessel, and provide an undertaking to indemnify the Sheriff, as well as a letter of authority/the particulars of the person effecting service of the warrant of arrest and writ. Once issued, a writ is valid for 12 months, however, a court will normally use its discretion to extend this period if there has been no opportunity for the writ to be served on the ship (e.g. if the vessel has not called in Singapore) in the preceding 12 months.

The claimant must provide in its supporting affidavit, full and frank disclosure to the court of all material factors relevant to the arrest warrant application, putting material factors in an appropriate context so that their significance may be understood. For example, the claimant must address and explain any potential issues with proof of ownership of the vessel. Similarly, the claimant must satisfy the steps and standards required to invoke admiralty jurisdiction in Singapore²⁴. If an invocation of admiralty jurisdiction or an arrest application is challenged, then the claimant will also need to show a good arguable case on the merits of the claim²⁵.

Arrest is effected by means of the warrant of arrest being affixed for a short period on any mast of the ship or on the exterior of any suitable part of the ship's superstructure, whereupon it comes under the custody of the Sheriff.

Security

A first class guarantee from a bank registered in Singapore, a bail bond, payment into court, or a letter of undertaking from a reputable P&I club/H&M underwriter is sufficient security for release of a vessel. Security is usually sought from the defendant owners in an amount equivalent to the plaintiff's "best arguable case" together with interest and costs.

Counter-security

The Singaporean courts do not require counter security in order to arrest a ship. The Sheriff is entitled to request that the arresting party place security to cover the Sheriff's expenses in maintaining the vessel while under arrest, which includes the cost of a guard service. The Sheriff requests the arresting party's security at the outset of the arrest and whenever else the Sheriff deems necessary. If the arresting party does not provide funds to maintain the vessel, the Court may release the vessel from arrest. In practice, an initial deposit of S\$5,000 to S\$10,000 is usually required on account of such Sheriff's expenses.

A local law firm is instructed by the Claimant to prepare and file the arrest papers and carry out the arrest. It is the local law firm that has to provide an undertaking to the sheriff to be responsible for its costs and for this reason the law firm will require a cross undertaking from the client, or sufficient payment to cover the firm's undertaking to the sheriff.

²³ Also known as a writ in rem.

²⁴ These are set out in sections 3 and 4 of the High Court (Admiralty Jurisdiction) Act

²⁵ See *The Bunga Melati 5* [2012] 4 SLR 546 at [96].

Arrest of a sister-ship/associated ship and maritime liens

Singaporean law does not provide as broad a scope to arrest vessels as in some other jurisdictions (for example, the South African arrest regime is significantly wider in scope), however, the arrest of a sister-ship/associated ship is possible when the beneficial owner of a vessel is the same person as the *in personam* defendant owner of the defendant ship²⁶. Salvage claims, claims for damage done by a ship in a collision, crew wages, master's disbursements and bottomry are all claims that would create maritime liens.

Sale of a ship

The arresting party can complete an application for sale of the vessel as soon as it can show that the vessel has been arrested for some time and no security is forthcoming from the debtor (the court would typically wait for a period of around 3 weeks), and that the arresting party continues to incur costs arising out of the arrest. After the court hands down the order for sale the length of time that the vessel is put up for sale depends on the commercial circumstances. The court may allow sale by private treaty in special circumstances, but public auction is the preferred method.

Wrongful arrest

Actions for wrongful arrest are rare and do not often succeed. An arrest warrant, even if it is later found to be unjustified and set aside, will only be considered wrongful (and therefore open up the possibility of civil liability) where it can be shown that the claimant acted in bad faith, or with gross negligence implying malice.

A failure to make full and frank disclosure of all material facts can be adequate grounds for an award of damages for wrongful arrest where such inadequate disclosure is found to have been deliberate, calculated to mislead, caused by gross negligence, and/or caused by recklessness.

²⁶ Section 4(4)(ii) HCAJA

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EUROPE



EUROPEAN ATTACHMENT ORDERS

The Recast Regulation

The Recast Regulation introduced radical changes to the ways in which a party can arrest a vessel or obtain an attachment over other assets, within EU jurisdictions.

European Attachment Orders

Following the Recast Regulation, creditors in Member States are able to enforce attachment orders throughout Member State courts, meaning that an attachment order made in the court of a Member State is effectively a European Attachment Order. This is true even of such orders granted on the basis of *ex parte* (without notice to the defendant) applications. Attachment orders provide a creditor with a security interest in a specified asset belonging to a debtor, so as to give the creditor rights "in rem" against the debtor. In practice, this means that rights in the assets are transferred to the creditor or the assets are ordered to be sold for the benefit of the creditor.

Article 39 of the Recast Regulation provides that a judgment that has been issued in a Member State and is enforceable in that Member State, shall be enforceable in any other Member State without the need for a separate declaration of enforceability. In practice, this extends not just to an order attaching an asset but also to an order freezing an asset or arresting a vessel. For example, in 2017 a London branch of a Belgian bank was entitled to freeze assets it held after being served with orders issued by the Dutch and Belgian courts²⁷. The English courts will enforce validly obtained foreign judgments without enquiring into errors of fact or law in the original decision²⁸.

Objecting to the enforcement of an order/judgment under the Recast Regulation

However, a debtor may object to the recognition or enforcement of a judgment under the Recast Regulation, on the grounds that:

- The original court lacked jurisdiction to hear the matter
- It would be manifestly contrary to UK public policy
- The debtor was not served with proceedings in time to enable the preparation of a proper defence
- A prior conflicting judgment has been issued in the UK or the courts of another EU Member State

Going Dutch

The Netherlands is widely regarded as one of the easiest EU jurisdictions within which to secure an arrest of, or attachment over, a vessel. Dutch procedural law provides owners, charterers and other parties looking to arrest vessels or attach assets with an effective means to obtain security in advance of proceedings against a defendant. Pre-judgment attachment orders can be obtained in hours, rather than days, thus providing a timely way to exert pressure on a debtor to settle its bills before proceedings are started. A vessel may be arrested for claims against a bareboat charterer, for cargo claims and for claims against a time charterer for activities integral to the vessel's operation, such as claims for unpaid bunkers and supplies.

²⁷ *National Bank of Kazakhstan and another v The Bank of New York Mellon SA/NV, London Branch* [2017] EWHC 3512.

²⁸ The Recast Regulation (as well as the Brussels I Regulation and the Brussels and Lugano Conventions, which deal with similar issues) contain express prohibitions on the courts of Member States reviewing the substance of judgments issued by the courts of other Member States.

The flexibility of the Dutch courts was demonstrated in 2015, when the Rotterdam court granted a pre-judgment *ex parte* attachment order over a vessel, in circumstances where its precise location was unknown²⁹. The vessel was understood to be located somewhere in either Germany or Austria and the order was worded in broad terms to reflect this uncertainty.

Further, the Netherlands has flexible rules on the criteria required in order to arrest a debtor's sister-ship(s) and/or ships in associated ownership and any asset of a debtor may be arrested to obtain security in enforcement of a judgment or award. Such arrests are flexible and can be lifted by way of a telephone call to the bailiff (without requiring the intervention of the court) as soon as the debtor provides sufficient alternative security³⁰.

It is possible that the Dutch courts will be used more frequently in the coming years once the Netherlands Commercial Court is fully established. This is a specialist court which it is envisaged will hear complex and high value international commercial cases in English. It is expected to be operational within 2018. It remains to be seen how attractive this court becomes to parties looking to obtain arrest orders and attachment orders; however, it could potentially provide a viable lower cost alternative to litigating such issues in the courts of England or the United States.

Enforcement of European Attachment Orders and Judgments Post-Brexit

The UK government published a guidance paper in August 2017, entitled: *"Providing a cross-border civil judicial cooperation framework"*³¹. The paper proposes that the UK and the EU replicate the existing regime for jurisdiction and enforcement of orders/judgments beyond the two-year transition period, and into the 'strong and stable' or 'new and strong' relationship thereafter.

It states the UK government's intention that the Rome I³² and II³³ Regulations on choice of law and applicable law in contractual and non-contractual matters would become part of UK law after Brexit. This would ensure there is no material change in the manner in which governing law clauses are currently treated by the UK and the Member States (these Regulations should be automatically adopted in any event, together with all other EU law in force as on the date of the European Union (Withdrawal) Bill).

The guidance paper also states the UK government's intention to remain part of the Lugano Convention after Brexit (see below). This Convention contains the reciprocal rules on jurisdiction and enforcement of judgments between the EU and Norway, Iceland and Switzerland. It is modeled on the Brussels I Regulation (an earlier version of the Recast Regulation).

It is unclear if or when the UK government will strike a deal with the EU for a post-Brexit regime of mutual recognition and enforcement of judgments/orders and jurisdiction clauses, but one can take guidance from the current fall-back positions to assess what a post-Brexit regime might look like. The current options are:

1. A special agreement between the UK and the EU that replicates the Recast Regulation

This is the UK government's preferred option. Under such circumstances, the intention is that the post-Brexit regime would not differ greatly from the current regime, (but this is subject, of course, to the nature of the agreement reached).

2. The UK becomes an independent signatory to the 2007 Lugano Convention

This is the UK government's stated intention.

²⁹ Navin 24, Court of Rotterdam, 12 March 2015, ECLI: NL: RBROT: 2015: 3395.

³⁰ <http://shiparrested.com/netherlands-ship-arrests-in-practice-11th-edition/>

³¹ <https://www.gov.uk/government/publications/providing-a-cross-border-civil-judicial-cooperation-framework-a-future-partnership-paper>

³² Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

³³ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

Under the Lugano Convention, a party can apply for both civil attachment of assets and a declaration of enforceability against the assets of a debtor in a country that is a signatory to the Convention. The judge decides in *ex parte* summary proceedings, issues an attachment order and a declaration of enforceability. A debtor seeking to avoid payment must appeal the declaration of enforceability and object to the order to pay.

Post-Brexit the UK will cease to be a Member State and the consensus is that the Lugano Convention would then no longer apply in the UK Courts. However, if the UK signs the Convention in its own right, this would ensure there is no material change to the mutual recognition of jurisdiction clauses and the mutual enforcement of judgments between the UK and Iceland, Switzerland and Norway (and unless the envisaged separate agreement is reached, the Member States).

3. The 2005 Hague Convention on Choice of Court Agreements (the Hague Convention 2005)

The Hague Convention 2005 sets out rules for dealing with jurisdiction but only where there is an exclusive jurisdiction clause in place. It is currently only applicable to EU Member States, Mexico and Singapore. The scope of the Hague Convention 2005 is more limited than the Recast Regulation or the Lugano Convention, but still includes the essential provision that courts will respect exclusive jurisdiction clauses and judgments of other countries that are a party to it. It does not apply where there is a one-way/hybrid³⁴ or non-exclusive jurisdiction clause. The UK is free to accede to the Hague Convention 2005 unilaterally so this could provide a stop-gap if no UK-EU deal is forthcoming.

4. The UK leaves the EU without a deal

In this case, which is considered unlikely, the question of whether the court of a Member State would respect and enforce UK judgments would depend on the local law of the relevant Member State. It would be prudent to seek local legal advice if this comes to pass. However, the domestic law of most Member States provides for the recognition of jurisdiction clauses and enforcement of foreign judgments.

HFW Perspective

At a recent HFW event, '*Brexit: one year to go – what to expect*', the Rt. Hon. Dame Gloster downplayed the potentially chilling effects of Brexit on the enforcement of English judgments in Member States and English enforcement of Member State judgments. She cited the fact that the common law is at the vanguard of developments in fintech and artificial intelligence, the UK's strong and independent judiciary, and the enlightened self interest of the EU in maintaining the status quo.

Whatever deal the UK and the EU negotiate post-Brexit, they are sure to take into account that there are billions of pounds of assets located in the UK against which European creditors (including for example European banks, many of which are established in or have branches in the UK) want to be able to enforce judgments (whether obtained in the English Courts or other Member State courts). In addition, the UK and its European neighbours enjoyed mutual recognition regimes before the creation of the EU. The default position in most Member States vis-à-vis most non-EU nations is one of comity and there is no reason to believe that this will not be the position between most if not all Member States vis-à-vis the UK, post-Brexit.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

³⁴ A 'one-way' or 'hybrid' jurisdiction clause is a split jurisdiction clause which restricts one or more of the parties subject to the clause to bringing proceedings in a defined forum, whereas it provides one or more other parties subject to the clause the discretion to choose between a number of forums.

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