

Enforcing US judgments in England & Wales: a guide for creditors

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INTRODUCTION

As there is no reciprocal enforcement agreement between the USA and England & Wales, if you are owed money by a debtor in the US it can be complicated to get the debt settled – a US judgment cannot simply be “registered and enforced” in our courts.

In this guide, we explain how a creditor who has obtained a judgment in the USA can enforce their judgment against assets of a debtor in England & Wales.

What is the Common Law Regime?

In the absence of a reciprocal enforcement agreement, a US judgment needs to be enforced under the “Common Law Regime” in England & Wales. In essence this requires the creditor to issue a fresh claim seeking payment of the debt in the courts of England & Wales based on the US judgment.

Subject to the claim satisfying certain conditions (outlined below), the courts of England & Wales will then issue a judgment. At that stage, steps can then be taken to enforce the debt against any assets held by the debtor in England & Wales eg. property and land, art, vehicles, jewellery and other valuable assets.

As this can be a complicated procedural process, we would recommend that you seek expert legal advice as soon as it becomes clear that the debt will need to be enforced in England & Wales.



What conditions are there to having the judgment recognised?

For the US judgment to be successfully enforced in England & Wales, the creditor will need to satisfy that the debtor (whether a person or entity), fulfilled one of the following conditions:

- 1. They were present in the US at the time the proceedings were issued there;**
- 2. They were the claimant or counterclaimant in the US proceedings;**
- 3. They submitted to the US jurisdiction by voluntarily appearing in the proceedings other than to dispute jurisdiction;**
- 4. They agreed to the jurisdiction of the US court, before the commencement of proceedings, eg. in a contract.**

The creditor must prove that the debtor can meet these conditions and steps should be taken to analyse their ability to do so before a claim is issued in England & Wales. Making these checks is likely to speed up the process overall and limit the risk of any procedural mishaps.

What type of judgments can be enforced?

There are specific requirements regarding the type of US judgment which may be enforced under the Common Law Regime. Therefore, a creditor must also be able to satisfy the following conditions:

- **The judgment is for an ascertainable and definite sum of money. This means that judgments for specific performance and injunctions are unlikely to be enforceable.**
- **The judgment must not relate to taxes, penalties or fines (eg. US-style punitive damages will not be enforceable in England & Wales).**
- **The judgment must be final, binding, and conclusive, meaning that interim judgments or judgments that are subject to an outstanding appeal are not enforceable.**

Again, the burden to prove that these conditions can be satisfied lies with the creditor, and this should be done before the issue of a claim in England & Wales.

What is the process?

Once the judgment creditor is satisfied that the formal requirements (listed above) can be satisfied, a claim can be issued in the courts of England & Wales.

The claim will need to be served on the debtor.

Where a debtor is not based in England & Wales, the court's permission to serve out of jurisdiction may be necessary.

If a creditor is unsure of a debtor's location, service may be more difficult. We work with experienced global tracing agents and can instruct them, where necessary, to seek to establish the debtor's whereabouts for service of proceedings.

The period of time permitted for the debtor's reply to the claim varies depending on whether they are in England & Wales or outside the jurisdiction.

Can a debtor defend the claim?

Yes, a debtor can either admit or defend the claim in the English & Welsh courts. A defence to the claim must be premised on very limited grounds in order to succeed. These grounds include:

- **The judgment being obtained by fraudulent means – the debtor will need to satisfy the court that the US judgment would not have been made but for the alleged fraud;**
- **The judgment relates to a fine, penalty or taxes;**
- **The judgment being obtained contrary to natural justice. In other words, there was an issue in the original proceedings which was such that where the judgment was enforced it would be deemed a breach of natural justice. An example would be where a debtor was not given notice of the US proceedings and therefore not afforded the opportunity to respond to the claim;**
- **Public policy grounds which support the judgment not being recognised in the courts of England & Wales.**

Can a creditor seek summary judgment where a defence is filed?

Where a debtor files a defence it may be possible to apply for summary judgment in circumstances where the defence does not satisfy one of the limited grounds set out above and / or where the defence has no real prospect of success.

An application for summary judgment is an interim application which, where successful, will avoid the need for a full trial hearing. Where successful, this is often a much faster and more cost effective process. However, where the application is unsuccessful it can result in a costs order against the judgment. Advice should therefore be taken regarding the likelihood of obtaining summary judgment based on the defence offered by the debtor before an application is issued.

What if a debtor does not respond to the claim?

Where a debtor fails to acknowledge the claim, or file an admission or defence, it is possible to ask the court to issue a judgment in default in the absence of a response from the debtor.

What happens once judgment is obtained in England & Wales?

Once judgment has been issued, it will need to be served on the debtor. In addition to the judgment amount, the creditor can claim interest on the judgment amount from the debtor.

If the debtor fails to make payment after service of the judgment, the creditor will need to enforce the judgment against the debtor's assets.

What is the process for enforcement in England & Wales?

The judgment creditor is entitled to enforce the US judgment as though it was originally obtained in England & Wales. This means that the creditor can access the various methods of enforcement available and employ the one most likely to see a financial return. The methods of enforcement include:

- **Take control of goods via high court enforcement agents or county court bailiffs (eg. vehicles / aircraft / jewellery / artwork)**
- **Charging orders over the debtor's property / land**
- **Third party debt orders**
- **Attachment of earnings orders**
- **Insolvency proceedings**

You can read about the different [methods of enforcement](#) in more detail on our website.

As with all claims a creditor should understand what assets a debtor has against which they will enforce judgment prior to a claim. Should this be required we can recommend specialist investigation agents to assist.

Freezing a debtor's assets

A creditor should consider the length of time it will take to obtain the judgment in England & Wales, and whether there is a risk that the debtor will seek to dissipate their assets during this process.

As enforcement of a US judgment can sometimes take as long as 6-12 months, a creditor may wish to consider a Freezing Order / Freezing Injunction over a debtor's assets where there is a solid risk that without freezing the debtor's assets, the debtor may not have assets available to pay the judgment when it is registered. A Freezing Order / Freezing Injunction is an interim remedy which prohibits a debtor from dissipating their assets and preserves the same until final judgment can be obtained.

You can read more about the process for obtaining a [Freezing Order / Freezing Injunction](#) on our website.

Can we help you?

Enforcing a US judgment is complicated but our experienced team can help you to navigate the process. If you are owed monies by a debtor in the US or anywhere else overseas, please contact our team to discuss the ways we can help you to get your money paid.



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