



SIFOCC'S 2019 MULTILATERAL ENFORCEMENT MEMORANDUM

A PRACTICAL GUIDE TO
THE INTERNATIONAL
ENFORCEMENT OF
FOREIGN MONEY
JUDGMENTS

Dispute Resolution analysis: In June 2019, the Standing International Forum of Commercial Courts (SIFoCC) published a Multilateral Memorandum on Enforcement of Commercial Judgments for Money (the memorandum), a landmark multilateral memorandum providing legal guidance on the enforcement of money judgments issued by commercial courts of its membership countries. Derek Bayley and Sara Sheffield, associate and partner in the commercial disputes team at HFW Dubai, outline the aims, scope and limitations of the memorandum.

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What is the Standing International Forum of Commercial Courts?

Launched in May 2017, the SIFoCC is a modern multinational judicial initiative pioneered by former Lord Chief Justice, Lord Thomas. The SIFoCC is in effect an assembly of commercial judiciaries from around the world. The SIFoCC meets every 12–18 months, to share best practice and further its aims of mutual enforcement. The SIFoCC’s current membership includes representatives from almost 40 jurisdictions across five continents, each represented by senior judiciary members, including a number of Chief Justices. The SIFoCC has previously met in London in 2017 and New York in 2018. It will next meet in Singapore in 2020.

What is the memorandum, and what are the key points of relevance to dispute resolution practitioners?

The memorandum sets out laws and procedures from 32 key commercial courts around the world which are relevant to claimants/judgment creditors seeking to enforce a money judgment obtained in one jurisdiction in the courts of another. This includes England and Wales, a few EU Member States including Germany and France, various US state jurisdictions, Australia, New Zealand, Singapore, Hong Kong, Africa, and the Middle East, including the common law courts of Qatar (the Qatar

International Court) and the United Arab Emirates (including the Dubai International Financial Centre and the Abu Dhabi Global Market Courts).

The memorandum provides key guidance on general principles regarding the treatment of foreign commercial money judgments by the enforcement forum, in order to avoid merits review and decrease party costs and wasted time. It covers key legal and practical questions such as:

- which laws determine whether the judgment can be enforced in the requested court
- whether there are multilateral or bilateral treaties that may create a ‘fast-track’ regime for judgments of certain courts of origin
- what qualifies as a commercial money judgment for the purposes of the requested court
- what special grounds exist for refusal of enforcement of the judgment
- whether the enforcement court has any special requirements as to the way in which the original court exercised jurisdiction
- whether there is an operative limitation period to bring an action on the judgment for enforcement in the requested court
- whether there are any defences that can be raised by the judgment debtor

- what practical steps must a judgment creditor take to apply for enforcement
- what are the powers of the enforcement forum
- what deadlines and timetables exist for enforcement procedures

Enforcement guides are often authored by practitioners or are accessed via paid subscription services. In the memorandum’s case, however, the account of the rules for each court is provided either by experts from the enforcement country itself, or, in the majority of cases, members of the enforcement court itself. The memorandum is therefore a unique resource in terms of both its credibility and accuracy for practitioners and judgment creditors alike.

What is the scope of the memorandum, and what are its limitations?

There are some limitations to the scope of the memorandum’s coverage.

First, the memorandum explicitly concerns money judgments only—ie a ruling in one court requiring a person to pay a sum of money to someone else. It does not cover judgments for non-monetary or ancillary relief.



Second, whereas the memorandum recognises that some of the jurisdictions it covers are party to various multilateral or bilateral enforcement treaties—including, for example, bilateral treaties such as the Trans-Tasman Proceeding Act 2010 (Cth) between Australia and New Zealand, multilateral treaties such as the 2005 Hague Convention on Choice of Court Agreements, and for the enforcement of many judgments given by the courts of an EU Member State, Regulation (EU) 1215/2012, Brussels I (recast) and the Lugano Convention 2007—it does not necessarily set out in full the procedures that apply under such treaties.

Third, while instructive as a useful set of statement of principles, the memorandum does not have the same status as a treaty instrument. It therefore has no binding effect on its members or on judges of the courts that have produced the memorandum. Whereas the enactment of treaty law is for the remit of national legislatures, the memorandum is expressly stated not to ‘supersede any existing or future laws, judicial decisions or court rules.’

Fourth, the memorandum does not follow a uniform format, from jurisdiction to jurisdiction, such that there is some variation in the detail provided between jurisdictions.

To what extent might the memorandum address enforcement issues in the event of a no deal Brexit? Does it have potential to usurp the supremacy of arbitration awards when it comes to enforcement?

Given, as noted above, the memorandum does not have any binding effect, the memorandum will not:

- create any new legal architecture in the post-Brexit enforcement of commercial money judgments, if the UK ceases to be a party to the Regulation (EU) 1215/2012, Brussels I (recast), nor will it
- affect, circumscribe, or amend any enforcement regimes relating to arbitral awards (either domestic, or international)

In that regard, practitioners should still look to other primary legal resources which set out the relevant rights and obligations of parties, as well as secondary legal guidance to assist them in interpreting such obligations, in the context of both the enforcement of post-Brexit judgments, and the enforcement of 1958 New York Convention awards.

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