

Exploiting the opportunities presented by multi-jurisdictional litigation and avoiding the bear traps

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Governing law and jurisdiction

In the absence of choice

The position under Israeli law

- The country in which the defendant operates
- The agreement's interest
- Witnesses location
- The country in which the defendant is domiciled/operates
- Governing law



In the absence of choice

The position under English law

- Jurisdiction - EU domiciled/other defendants
- Governing law
- English courts will accept jurisdiction where the interests of justice require it



Factors for consideration when selecting forum

- Enforcement of judgments
- Interim remedies
- Disclosure
- Witness location
- Language
- Independent judiciary



Litigation –v– Arbitration

- Pros and cons to consider, for example:
 - Finality / ability to appeal
 - Privacy
 - Precedent
 - Cost / time



Approaching cross border disputes



Complementary proceedings

- Consistency of narrative
- Risk of unhelpful findings
- Ability to deploy material
- Use of judgments in other countries

Privilege

- Legal advice privilege
 - Confidential communication
 - With the “client”
 - Giving/receiving legal advice
- English courts: English rules
- Practical steps



Interim remedies



Norwich Pharmacal Orders

- Requires third parties to disclose documents / information
- Identify wrongdoers or build your case
- Trace assets
- Gagging orders
- Can be used in aid of foreign proceedings

Worldwide Freezing Orders

- Freezes assets, even where their value exceeds the value of the claim
- Freezes assets in and potentially outside England
- Ancillary to substantive claim, but not necessarily in England
- Enforcement of order
- Disclosure of all assets



Search orders

- Enter a party's premises to search for, copy and remove documents
- Real possibility of destruction of material
- Against defendant or a third party
- Gagging orders
- Penalties for non-compliance



1782 petitions

- Discovery from companies located inside the United States in lawsuits outside the US.
- May be granted when:
 - The subject of subpoena is in that district;
 - It is “for use” in a foreign proceeding; and
 - The application is made by a foreign tribunal or interested party.

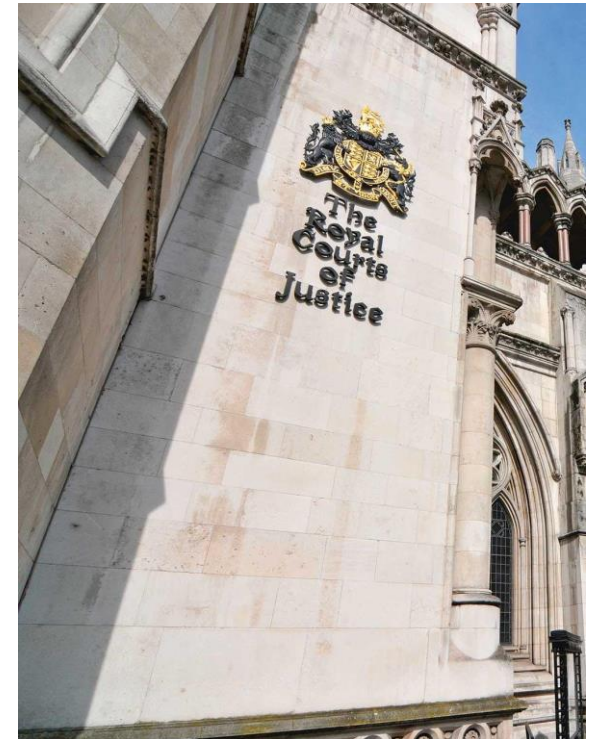


Enforcement of judgments

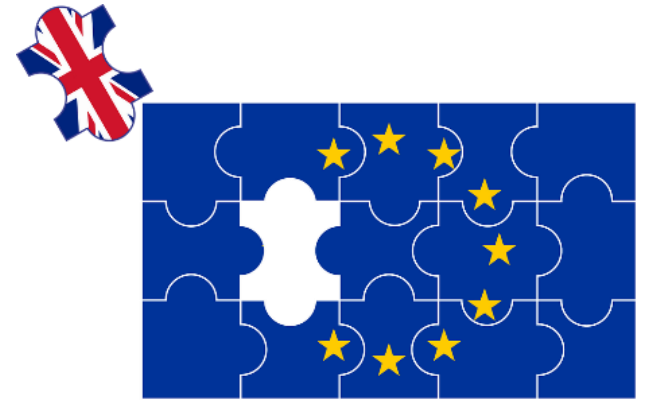


Enforcement in England

- Post-judgment freezing orders
- Third party debt orders
- Winding up orders
- Personal liability of directors
- Writs and warrants of control
- Charging orders



Brexit



Impact on enforcement of judgments

- Status quo will be preserved
- A no deal Brexit looks increasingly unlikely



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