

**Outer Temple**

**Leigh Day**

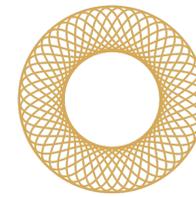
## **Litigating RTAs Abroad After Brexit**

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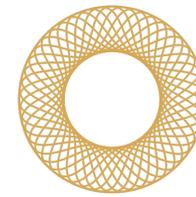
**Carin Hunt, Outer Temple Chambers**

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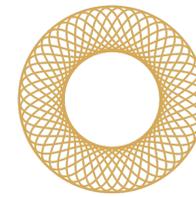
## **AGENDA FOR SEMINAR**

- Background
- Pre-Brexit position
  - Applicable law
  - Jurisdiction
  - Service
  - Enforcement
  - Role of the MIB in cross border cases
- Post - Brexit position
- Practical Considerations



## Background

- United Kingdom EU Membership Referendum on 23<sup>rd</sup> June 2016
- Decision was UK voted to leave by 52% to 48%
- Transition period leading up to Exit Day – 11pm GMT 31<sup>st</sup> December 2020
- European Union (Withdrawal Agreement) Act 2020.
- For proceedings commenced on or after 1 January 2021 neither the Brussels Regulation nor the Lugano Convention will apply.



## Applicable law – Pre Brexit

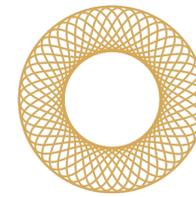
- **RTA Claims generally**

- Rome II (Regulation 864/2007)

- Article 4(1)- law of the country in which the tort happened
- Article 4(2) – law of the common habitual domicile
- Article 4(3) – the law of the country where the tort is ‘manifestly more closely connected’.

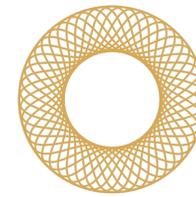
- **Claims involving the MIB**

- Claims under Motor Vehicles (Compulsory Insurance)(Information Centre and Compensation Body) Regulations 2003 - Law of country in which the tort happened (*Moreno v Motor Insurers' Bureau [2016] UKSC*)



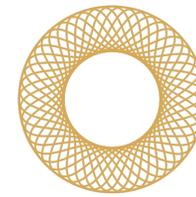
## **Jurisdiction – Pre Brexit**

- **Recast Regulation 1215/2012**
  - Direct actions against motor insurer (Arts 11 and 13 Recast as clarified in the case of FBTO Schadeveringen NV v Odenbreit)
- **Lugano II Convention 2007**
  - Which largely mirrored the Recast regulations and dealt with jurisdiction and enforcement between the EU and EFTA (Iceland, Norway, Switzerland)



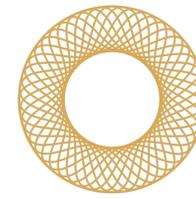
# Service – Pre Brexit

- **Service Generally**
  - Regulation (EC) No 1393/2007 'Service Regulations'
- **Service for motor claims**
  - The Fourth Motor Insurance Directive required each motor insurer in the European Union to have a claims handling representative in each Member State
  - Proceedings could be served on the claims handling representative rather than on the Foreign Insurer (*Spedition Welter GmbH v Avanssur SA C-306/12*)



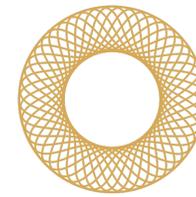
## Enforcement –Pre Brexit

- **Article 39 of Regulation (EU) 1215/2012, Brussels I (recast)**
  - *"A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required".*
- **Article 33 of the Lugano Convention**
  - *"A judgment given in a State bound by this Convention shall be recognised in the other States bound by this Convention without any special procedure being required."*



## Role of the MIB in cross border cases

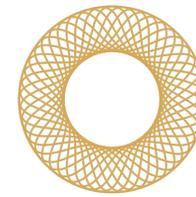
- The Motor Insurers Bureau ('MIB') act as a Compensation Body for UK residents injured in road traffic accidents in the EEA, and to reimburse its foreign counterparts in respect of EU27 visitors in the UK who have been compensated by their 'home' Compensation Body.
- S.12 and 13 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003
  - **2 months to identify an insurance undertaking** following a request
  - If no insurer is identified, **entitlement to make a claim for compensation against the MIB.**



## What has Changed?

- **Applicable law**

- Rome II was retained by *The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendments etc) (EU Exit) Regulations (SI2019/834)*:
  - Article 4(1)- law of the country in which the tort happened
  - Article 4(2) – law of the common habitual domicile
  - Article 4(3) – the law of the country where the tort is ‘manifestly more closely connected’.
- Article 18, the direct right against an insurer is also retained.

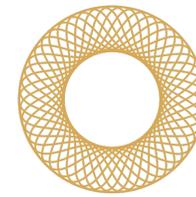


## What has Changed?

- **Jurisdiction**

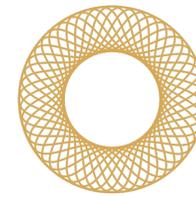
- Regulation 1215/2012 (Brussels Recast) and the Lugano Convention no longer apply.
- No alternative deal was put into place prior to exit day so, pursuant to Article 67 of the Withdrawal Agreement, jurisdiction for claims instituted\* after the end of the transition period reverts to common law test (CPR 6.36 + PD6B) and the new consumer contract and employee jurisdiction provisions in the Civil Jurisdiction and Judgments Act 1982 (ss.15A-E).

\*A claim is instituted when the claim form is issued, provided it is served correctly (see e.g. Reg 1(5) of *The Motor Vehicles (Compulsory Insurance) (Amendment etc) (EU Exit) Regulations 2019*).



## Jurisdiction - the common law test

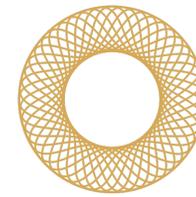
- Jurisdiction under the common law test turns upon being able to serve the claim form on proposed Defendant either because
  - The defendant is in the within jurisdiction; or
  - **The courts have given permission for service** to be effected out of the jurisdiction.
- To obtain permission to serve out of the jurisdiction under the common law rules, C must:
  - a) Get through one of the **gateways** in CPR PD 6B para.3.1;
  - b) Show that her claim has a **reasonable prospect of success** (or, that there is a serious issue to be tried on the merits); and
  - c) Establish that England is the **appropriate forum** for the claim such that the court ought to exercise its discretion to permit service out (forum conveniens).
- These tests must be satisfied on the evidence relating to the position as at the date when proceedings were commenced (*Goldman Sachs International v Novo Banco [2018] UKSC 34 at para [9]*). The burden of proof is on C.
- In the application, C also needs to set out the defendant's address or, if not known, in what place the defendant is, or is likely, to be found (CPR r6.37(1)(c)).
- The application for permission is usually made without notice, such that C will have a duty of full and frank disclosure.



## a) Getting through a gateway

- The gateways are set out in paragraph 3.1 CPR Practice Direction 6B
- The test is whether C has “a good arguable case” that her claim passes through a gateway. The courts had some difficulty applying this test and the various glosses that developed for it. In *Brownlie v Four Seasons Holdings Inc* [2018] 1 WLR 192 at [7], Lord Sumption explained what the court will require from C to get through a gateway:

“i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the Court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it.”



## a) Getting through a gateway

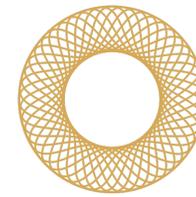
### The tort gateway

CPR 3.1 The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where ....

3.1(9) a claim is made in tort where

**(a) damage** was sustained, or will be sustained, within the jurisdiction

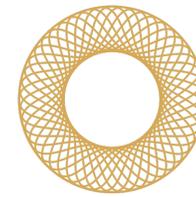
- *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45 has clarified how “damage” is to be interpreted. It is not limited to the damage that gives rise to the cause of action, but includes consequential damage suffered after the accident itself.
- Does the damage suffered need to be significant?



## a) Getting through a gateway

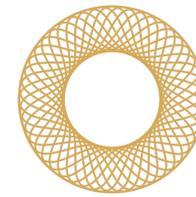
### Beyond the tort gateway

- **3.1(3)** the “anchor defendant” gateway. NB *ID v LU and BZ* [2021] EWHC 1851 (**Comm**): this gateway does not apply when the anchor defendant has voluntarily submitted to the court’s jurisdiction.
- **3.1(1)** claim for a remedy against a person domiciled within the jurisdiction
- **3.1(4A)** claim arises out of the same or closely connected facts
- **Contracts**: the contract gateways (3.1(6)(a)-(c)) and s15B Civil Jurisdiction and Judgments Act 1982.
- **Employees injured abroad while driving**: ss15A-15C Civil Jurisdiction and Judgments Act 1982.



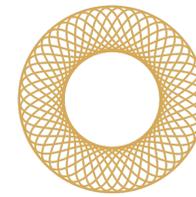
## b) Merits

- CPR Rule 6.37(1)(b): An application for permission under rule 6.36 must set out... that the claimant believes that the claim has a reasonable prospect of success.
- What is the test?
  - The Claimant is required to establish a real, as opposed to fanciful, prospect of success on his claim – see e.g. *AK Investment v Kyrgyz Mobil [2011] UKPC 7* at para [71].
  - This test has to be approached **proportionately** and the Court will want to avoid a mini-trial at these early stages of proceedings (*The Spiliada [1986] 3 All ER 843* at 846–847; *VTB Capital plc v Nutritek International Corp [2013] UKSC 5*). The court is taking a preliminary view.



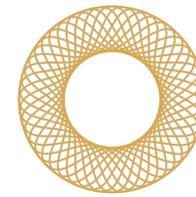
## b) Merits

- Does the Claimant need to provide evidence of the foreign law that applies to the claim to establish a reasonable prospect of success?
  - In *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45: in the absence of material evidence, the court can infer that the foreign law is materially similar to the English law.
- Defendant tip – the use of a “killer point” in the merits stage was introduced by Flaux J in *Erste Group v JSC 'VMZ Red October'* [2013] EWHC 2926 (Comm) at paras [11] and [12]



## c) Forum

- The task of the court is to identify the forum in which the case can be suitably tried for **the interests of all the parties and for the end of justice.**
- ***Spiliada* [1986] UKHL 10**
  - Looking for “the place in which the case may be tried more suitably for the interests of all the parties and for the ends of justice” [page 474]
  - Not mere convenience of the parties [page 475]
  - Looking for the courts of the place “with which the action had the most real and substantial connection” [page 478]
- **A two-stage test...**



## c) Forum

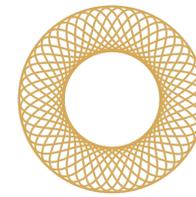
- **First Stage – connecting factors**

- Lord Briggs in *Vedanta Resources plc v Lungowe* [2019] UKSC 20 at [66]:

“That concept generally requires a summary examination of **connecting factors** between the case and one or more jurisdictions in which it could be litigated. Those include **matters of practical convenience such as accessibility to courts for parties and witnesses and the availability of a common language** so as to minimise the expense and potential for distortion involved in translation of evidence. Although they are important, they are not necessarily conclusive. Connecting factors also include matters such as the **system of law which will be applied to decide the issues, the place where the wrongful act or omission occurred and the place where the harm occurred.**”

- Note *VTB Capital v Nutritek International* [2013] 2 AC 337 at [51]:

“**The place of commission is a relevant starting point when considering the appropriate forum for a tort claim.** References to a presumption are in my view unhelpful. The preferable analysis is that, viewed by itself and in isolation, the place of commission will normally establish a prima facie basis for treating that place as the appropriate jurisdiction...The significance attaching to the place of commission may be dwarfed by other countervailing factors.”

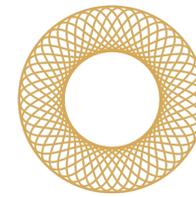


## c) Forum

- **First Stage – connecting factors**

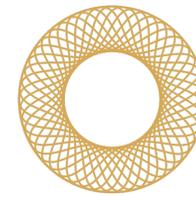
- Domicile
- Residence
- Any linked proceedings?
- Applicable law
- Is liability agreed? If so, place of the accident is likely to carry less weight.
- If quantum only and a foreign law applies, what kind of assessment is required by the foreign law (algorithm vs discretion)?
- Persisting symptoms and consequential damages – where will they be suffered?
- Can the witnesses give evidence in English or will translators be required?
- Will foreign experts be likely to need to give evidence, or will written (translated) reports be sufficient?
- Where exactly will the case be heard in the alternative forum and what is the comparative convenience to the parties of that location?

*Klifa v Slater* [2022] EWHC 427 (QB) - A recent consideration of the forum test in the personal injury context emphasises the need to take a detailed look at the particular facts of the case when determining forum.



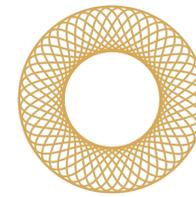
## c) Forum

- **Second Stage – the need to do justice**
  - England may nevertheless be the appropriate forum if there is **a real risk that substantial justice will not be done elsewhere.**



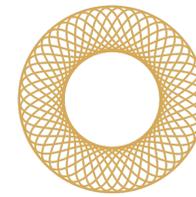
## Contesting Jurisdiction

- If C gets permission to serve, and you are for D and wish to contest jurisdiction you must contest the court's jurisdiction in your acknowledgement of service.
- 14 days to issue Part 11 application with evidence in support (may request further time e.g. if you need time to get expert foreign law evidence).
- Do not take any steps which are inconsistent with contesting the jurisdiction of the English court e.g. serving a defence or seeking an extension of time to do so.
- Costs – D may successfully seek a wasted costs order against C's legal representative under s51 SCA 1981 if it was clear beyond question that the English court did not have jurisdiction  
*Jovicic v Serbian Orthodox Church* [2020] EWHC 2229 (QB)



## Contesting Jurisdiction

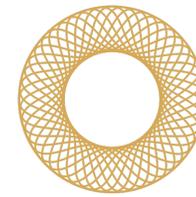
- If C received permission to serve out of the jurisdiction the defendant must establish that that permission should not have been granted i.e. that one of the three requirements (gateway, merit, forum) was not made out.
- If C was able to serve D as a matter of right, because D was in the jurisdiction, and D wishes to contest jurisdiction on grounds of *forum non conveniens*, then D must establish that the alternative jurisdiction (jurisdiction X) proposed by D is **clearly** the more appropriate forum. However, even if D can establish that jurisdiction X is clearly the more appropriate forum, a stay of proceedings may still be refused if other circumstances show that justice requires jurisdiction to remain in England. See *Klifa v Slater* [2022] EWHC 427 (QB)



## What has Changed?

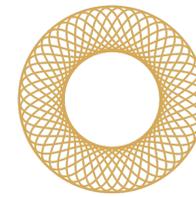
- **Service**

- Foreign Insurers no longer required to appoint a UKHA.
- Now need to serve Defendant or their nominated solicitors.
- Primary Service methods
  - CPR 6.40(3)(b)
    - *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 'Hague convention'*
  - CPR 6.40(3)(c)
    - *by any other Method permitted by the law of the country in which it is to be serve*



## Service Practical Tips

- **How to serve**
  - FPS- [foreignprocess.rcj@Justice.gov.uk](mailto:foreignprocess.rcj@Justice.gov.uk)
  - Hague Convention- <https://www.hcch.net/en/states/hcch-members>
  - Local lawyer
- **Enough time to serve?**
  - 6 Months for service outside the jurisdiction (*CPR rule 7.5 (2)*)
  - Service via the FPS- request will be rejected if there is not adequate life on the claim form to allow for service.
- **Apply to extend time for service?**
- **Apply for alternative service?**



## Extension of time for service

### **CPR r3.1(2)(a) :**

*'Except where these Rules provide otherwise, the court may—*

*extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for '*

### **CPR r 7.6**

*'(1) The claimant may apply for an order extending the period for compliance with rule 7.5.*

*(2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –*

*(a) within the period specified by rule 7.5; or*

*(b) where an order has been made under this rule, within the period for service specified by that order.*

3) the court may make such an order only if –

(a) the court has failed to serve the claim form; or

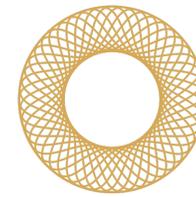
**(b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and**

**(c) in either case, the claimant has acted promptly in making the application.**

(4) An application for an order extending the time for compliance with rule 7.5 –

**(a) must be supported by evidence; and**

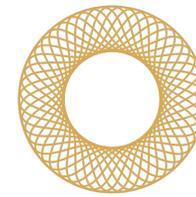
**(b) may be made without notice.**



## Principles the court will consider under rule 7.6

Blackburne J in *SodaStream Ltd -v- Coates* [2009] EWHC 1936 (Ch) paragraph[50]:

- *Is there was a good reason for the claimant's failure to serve the Claim Form within the period allowed by the rules?*
  - *The weaker the reason, the more likely the court will refuse the extension*
  - *Waiting until the Particulars of Claim were ready is not likely to provide a good reason*
- **A Defendant is under no obligation to give any positive assistance**
- **Overriding objective**
  - *The Court should only extend the period for serving the Claim Form when it is satisfied that to do so furthers the overriding objective dealing with cases "justly and at proportionate cost" and ensuring "the parties are on an equal footing and can participate fully in proceedings" and that the case is dealt with "fairly": *Formal Holdings Ltd -v- Frankland Assets Inc* [2021] EWHC 1415 [34] per HHJ Klein.*
- **Limitation**
  - *Whether the limitation period applicable to the claim has expired is of importance to the exercise of the discretion since an extension has the effect of extending the period of limitation and disturbing the entitlement of the potential defendant to be free of the possibility of any claim.*



## Alternative service

### CPR r 6.15

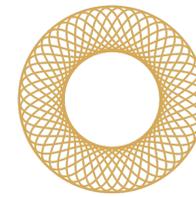
- (1) *Where it appears to the court that there is a **good reason** to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.*
- (2) *On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.*

### *Abela v Baadarani [2013] UKSC 44*

"a critical factor" when deciding whether to exercise the discretion under CPR 6.15 was the respondent's awareness of the content of the claim for (para [33]).

### *On The Beach Limited v Meeting Point Youtravel Tourism LLC [2021] EWHC 83 (QB),*

- Place of Business
- Service on Agent
- Dispense with Service
- Service by an alternative method or at an alternative place



# Applying to extend time for Service

*SMO v Tiktok Inc & Ors* [2022] EWHC 489 (QB)

## Factual background

- Claim brought by the Claimant for herself and on behalf of a class of children who used or had used TikTok, the social media platform from May 2018. It was alleged by the Claimant that the six Defendants were responsible for processing the personal data of the children and for invading their privacy and misusing the children's private information contrary to GDPR

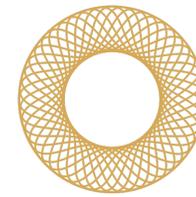
## Procedural background

- The Claim Form was issued on 30th December 2020. Six Defendants were named, of which only the Second Defendant was domiciled in E&W. No application was made to serve out.
- The Claimant wrote to the non-English companies inviting them to accept service without the need for the Claimant to obtain permission to serve out. The Claimant also sought a stay as it was 'not appropriate' to serve the claim form pending the decision of the Supreme Court in **Lloyd -v- Google**.
- Defendant replied agreeing the stay but stating:

*... our clients' positions regarding service of the Claim are reserved. Our clients' agreement to a stay is given expressly on the basis that it is without prejudice to their right to contest the jurisdiction of the Court and/or to oppose any application by your client for permission to serve out, if so advised...*

*For the avoidance of doubt, we do not have instructions to accept service on behalf of any of our clients. This letter does not constitute submission to the jurisdiction by any of our clients and is without prejudice to any challenge to the jurisdiction of the English Court in respect of any claim howsoever served."*

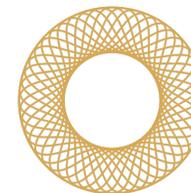
- Consent order approved which recited that the Defendants had expressly reserved their position on whether the English Court had jurisdiction and in respect of any potential application by the Claimant for permission to serve the Claim Form out of the jurisdiction. Over 3 months of the 6 month period for service had expired by the time the order was approved.
- The Supreme Court gave its judgment in Lloyd -v- Google on 10 November 2021. By virtue of the approved consent order, the stay was lifted in 28 days of the judgement (on the 8<sup>th</sup> December 2021)
- The Claimant attempted to agree a further stay but this was rejected. On 31st December 2021, the Claim Form and Particulars of Claim were served on the Second Defendant. On 4th January 2022, the Claimant's solicitors contacted the Foreign Process Service of HMCTS, enquiring as to the time it would take to effect service on a defendant domiciled in China. They were informed by a FPS representative on 6th January 2022 that it could take over a year. Despite this, no applications were filed at court by the Claimant until 22nd February 2022, when the deadline for service was the 3rd March 2022.



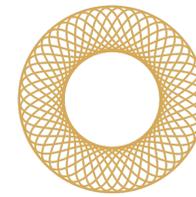
## *SMO v Tiktok Inc & Ors* [2022] EWHC 489 (QB)

- Claimant's application sought:
  1. **Permission to serve the Claim Form on the Defendants who were domiciled outside England and Wales**, in respect of whom permission to serve out was required (USA, Cayman and People's Republic of China);
    - a) Permission given- satisfied the gateway - serious issue to be tried and that England and Wales was the most appropriate jurisdiction.
  2. A '*straight forward extension of time*' for service;
    - a) The application was very far from 'straightforward'
    - b) The chronology put forward by the Claimant 'was apt to mislead'
    - c) The Defendants' solicitors had been consistent throughout: the Service Out Defendants were not going to authorise or accept service of the proceedings [92].
    - d) "*The inescapable reality is that the reason that the Claimant needs an extension of time is that she has failed to take the necessary steps to serve the Claim Form within the time for doing so until practically the last minute. There is no good reason for that failure [73].*"
    - e) *Extension refused*
  3. **Permission to serve the Claim Form by alternative means** on the First, Fourth, Fifth and Sixth Defendants by service on solicitors who had acted for the Defendants but who had confirmed that they were not authorised to accept service of the Claim Form
    - a) No good reason – permission refused.

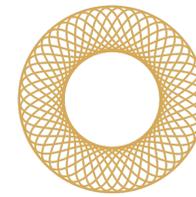
# Enforcement



Country	Steps for Recognition	Timescales	Condition to be satisfied	Assessment of decision of the English Court	Costs
<b>France</b> LBEW Advocats (Benoit Graffin)	<ul style="list-style-type: none"> <li>- English judgement to be served on the Defendant in accordance with English procedural rules</li> <li>- Issue proceedings of Exequatur usually in the court local to the Defendant's domicile</li> </ul>	<ul style="list-style-type: none"> <li>- 6 – 12 months for judgement to be recognised</li> <li>- A few weeks to months for enforcement</li> </ul>	<ul style="list-style-type: none"> <li>- The Claimant will need to provide i) the original copy of the Judgment with apostil, ii) a sworn translation of the Judgment and iii) a statement from the Claimant's solicitor confirming that the Judgment to be enforced is final and that the Defendant no longer has any appeal proceedings available in the UK.</li> <li>- The French Court will check 3 conditions: i) The competence of the Court which has handed down the Judgment ii) The conformity of the Judgment to French conception of Public Order iii) The absence of any evasion of the Law;</li> </ul>	No	Disbursements such as translation costs, Court costs or Bailiff costs are recoverable  Fees of the French lawyer in charge of the proceedings of "Exequatur" not typically recoverable although court has some discretion.
<b>Spain</b> Estudio Jurídico Almagro SLP (David Sanchez Almagro)	Enforcement will be governed by the general provisions on enforcement under Act 1/2000 of 7 January 2000 (the Civil Procedure Act) and Act 29/2015 of the 30 July on International legal cooperation on civil matters ("Act 29/2015)	-3-9 months if no objection by the Defendant -9-24 months if the Defendant objects	It will be necessary to provide the following documents (Art. 54.4) with translations into Spanish: <ul style="list-style-type: none"> <li>• Original or certified copy of the foreign judgment dully legalised with The Hague Convention Apostille.</li> <li>• When the decision was rendered in default, the document confirming that the Defendant was correctly served.</li> <li>• The document confirming that the judgment is final and enforceable in the country of origin.</li> <li>• A Power of Attorney authorising the Spanish Lawyer requesting the enforcement to act on behalf of the party wishing to enforce it.</li> </ul> <p>A foreign judgment will not be recognized when (Art. 46):</p> <ul style="list-style-type: none"> <li>- It is contrary to Spanish public policy.</li> <li>-The judgment is in breach of the right of the defence of either party.</li> <li>-The foreign judgment has been issued on a matter in respect of which Spanish courts have exclusive jurisdiction or, in respect of other matters, if the jurisdiction of the court of origin is not reasonably connected.</li> <li>-The judgment is irreconcilable with a judgment issued in Spain (whether the foreign judgment was issued before or after the Spanish one).</li> <li>-The judgment is irreconcilable with an earlier judgment given in another country, provided that the earlier judgment fulfils the conditions necessary for its recognition in Spain.</li> <li>-There is a pending litigation in Spain involving the same cause of action and between the same parties, initiated prior to the foreign proceedings.</li> </ul>	No (Art 48)	The general rule is that costs are recoverable but typically not more than 33% of quantum



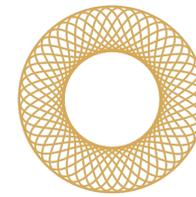
Country	Steps for Recognition	Timescales	Condition to be satisfied	Assessment of decision of the English Court	Costs
<b>Italy</b>	<p>Automatically recognised - Regulated by Italian Private International law, specifically Law no. 218/1995.</p> <p>According to Art. 64 of Law 218/1995</p>	- 1-6 months	<ul style="list-style-type: none"> <li>- The Claimant will need to provide i) the original copy of the Judgment with apostil, ii) a sworn translation of the Judgment and iii) a statement from the Claimant's solicitor confirming that the Judgment to be enforced is final and that the Defendant no longer has any appeal proceedings available in the UK.</li> <li>- The French Court will check 3 conditions: i) The competence of the Court which has handed down the Judgment ii) The conformity of the Judgment to French conception of Public Order iii) The absence of any evasion of the Law;</li> </ul>	No	<p>Disbursements such as translation costs, Court costs or Bailiff costs are recoverable</p> <p>Fees of the French lawyer in charge of the proceedings of "Exequatur" not typically recoverable although court has some discretion.</p>
<b>Netherlands</b> Leidse Letselschade Advocaten (Gerben Janson)	<ul style="list-style-type: none"> <li>- The reciprocal enforcement of Foreign Judgements (the Netherlands) Order 1969.</li> <li>- an application by a judgment creditor for the grant of execution should be made to the "arrondissementsrechtbank" in whose jurisdiction the judgment debtor is resident or owns property.</li> </ul>	- TBA subject to workloads of the court (estimate 6-12 months)	<p>can only be refused on the grounds set out in The reciprocal enforcement of Foreign Judgements (the Netherlands) Order 1969</p> <ul style="list-style-type: none"> <li>- English judgment would be manifestly incompatible with the</li> <li>- public policy of the Netherlands</li> <li>- obtained by fraud or</li> <li>- inconsistent with a judgment given in the Netherlands in a dispute between the same parties.</li> <li>- The Dutch courts will also need to establish that the English judgment is enforceable in the UK.</li> </ul>	No	Possible to include the reasonable costs of and incidental to the grant of registration or of execution



## *WHAT HAS CHANGED*

- **Role of the MIB**

- *Following Brexit the MIB asked the Bureaux and Guarantee Funds of EEA states to sign bilateral Protection of Visitors agreements to facilitate the exchange of information. To enable the MIB and its EEA counterparts to assist victims in obtaining the information they need to make claims in the country where the accident occurred. There were two agreements proposed – one covering victims of insured drivers and one covering victims of uninsured or untraced (i.e. hit-and-run) drivers. The latter agreement includes a reciprocal clause committing both guarantee funds to compensate victims who are resident in the other country.*
- The countries who have signed can be found here:  
<https://www.mib.org.uk/media/454662/signed-protection-of-visitors-agreements.pdf>
  - Requests for insurance details can be submitted to the MIB (No deadline for responding)
  - UK-based victims, in the event of an accident with an uninsured or 'hit-and-run' driver, will need to claim to the foreign equivalent of the MIB.



## *Practical Considerations*

- Best interest of the client?
  - Claim in England, place of tort or place of the Defendant's domicile?
    - Cost implications
    - Enforcement
    - Advantages of proceeding in England over foreign jurisdiction?
- ATE/BTE cover?
  - Finely balanced cases – will ATE provide cover – special approvals?
  - BTE – does it provide sufficient cover for resolving jurisdiction/does it provide cover for litigation in a different jurisdiction?
- When do you issue?
  - Limitation
  - Connections to the Jurisdiction