INTERNATIONAL ASSET RECOVERY
ENFORCEMENT STRATEGIES

Simon Bushell and James Davies of Latham & Watkins LLP explain the process of locating, preserving and recovering assets in the UK and overseas.

It is important for international companies to be able to plan and implement an effective enforcement strategy across multiple jurisdictions as soon as possible after discovering a wrongdoing.

Even at the very start of a commercial relationship, parties should be thinking about the potential for enforcement in the event of a dispute; for example, by finding out as much as possible about the counterparty's assets in advance and by negotiating effective governing law and dispute resolution clauses.

Once a dispute has arisen, if a company acts quickly to identify and preserve the defendant's assets, it may be able to prevent the dissipation of those assets and satisfy any judgment in full, without the pain of engaging in long, expensive and risky enforcement proceedings in multiple jurisdictions post-judgment (*see box "Case study"*).

A failure to act with sufficient speed and diligence may, at best, delay and reduce a claimant's eventual recovery and, at worst, result in the relevant assets being placed totally beyond its reach, rendering useless any judgment in the claimant's favour.

The steps outlined in this article will help to minimise the prospects of this unfortunate situation arising.

ESTABLISHING A CLAIM

An effective strategy is particularly important in cases where the defendant is likely to take, or has previously taken, steps to hide or otherwise protect its assets; for example, by transferring them overseas or to related parties. This might be as part of a fraudulent scheme at the heart of the defendant's wrongdoing, or simply a response to the threat of a judgment. Either way, this can create difficulties in identifying additional potential defendants for the purpose of bringing a claim and in locating their assets for subsequent enforcement.

Norwich Pharmacal orders

One effective means of information gathering is to seek a Norwich Pharmacal order, which enables a claimant to seek disclosure from third parties to a dispute (*see box "Case study: Norwich Pharmacal relief" and Briefing "Norwich Pharmacal orders: recent case law and practice points", www.practicallaw.com/7-380-9444*).

A Norwich Pharmacal order is often sought to obtain information relating to the whereabouts of assets held by defendants to which the claimant asserts a tracing claim. Such an application will often be made against the defendant's bank for disclosure of banking records, statements and other relevant correspondence, as in *Bankers' Trust Company v Shapira [1980] 1 WLR 1274*.

Norwich Pharmacal orders can be (and often are) made without notice and before proceedings are commenced in order to avoid the risk of further dissipation of assets. An applicant must establish that:

Case study

Shop USA is an international retail chain based in the US.

Mr X is the manager of the Paris branch of Shop USA. Mr X has for several years been buying goods from an English manufacturer, Supply UK. Mr Y is the sole shareholder and director of Supply UK.

Until a few months ago, Shop USA was paying £80 per unit for Supply UK's goods. However, there has recently been a sharp increase in price to £100 per unit. This price increase has not been reflected elsewhere in the market.

The board of Shop USA queried the price increase and conducted an internal audit. It was unconvinced by Mr X's explanation, and this led it to conduct further internal inquiries. Mr X's personal assistant has disclosed that Mr X has been making numerous phone calls to a bank in Jersey, and has taken flights there on several occasions.

Shop USA suspects that it may be the victim of a fraud by Mr X and Supply UK, and has contacted its legal team to advise on next steps.

- There is a good arguable case that a wrong has been committed.
- No other relevant provision of the Civil Procedure Rules (CPR) could apply (for example, CPR 31.16 (pre-action disclosure) or 31.17 (non-party disclosure)).
- The respondent is likely to have relevant documents or information.
- The respondent is involved or mixed up in the wrongdoing, whether innocently or not.
- The respondent is not a mere witness.
- The order is necessary in the interests of justice (that is, it is necessary in order for a claim to be brought).

In addition, the claimant may consider an application for pre-action disclosure from the defendant under CPR 31.16, and if an application is being made for a freezing injunction, the claimant may seek an ancillary order directing a party to provide information about the location of relevant property or assets under CPR 25.1(g) (*see "Freezing injunction" below*).

IDENTIFYING AND PRESERVING ASSETS

Where it is thought possible that the defendant's assets may be dissipated, it is advisable to consider seeking to preserve them by way of a freezing injunction and/or a proprietary injunction (*see box "Case study: preserving assets"*). Other options not covered in this article, but which may be useful in certain situations, include the appointment of an interim receiver.

Instructing enquiry agents

Enquiry agents can be helpful in obtaining information about defendants' assets in the absence of, or in addition to, a disclosure order. It will be necessary to instruct the agents early in the process and, in a multi-jurisdictional case, it will be important to instruct agents with international experience.

Under plans announced by the Home Office in July 2013, all enquiry agents in England and Wales will be required to be licensed by the Security Industry Authority (*www.sia.homeoffice.gov.uk/Pages/licensing-private-investigations.aspx*). The plans are expected to be rolled out from autumn 2014 and anyone instructing enquiry agents should check whether this requirement has come into effect and, if so, ensure that only a fully licensed enquiry agent is instructed.

In England and Wales, there are strict limits on the activities that an enquiry agent can carry out in the investigation of private individuals or companies. An unlawful investigation can potentially attract criminal liability (for example, under section 55 of the Data Protection Act 1998 for the unlawful obtaining of personal data) or civil liability, and any evidence obtained by unlawful means may be inadmissible in court.

It is therefore advisable to stipulate expressly in any instruction to an enquiry agent that only lawful means be employed in the investigative process, and to instruct foreign counsel to advise on any investigations being carried out in their jurisdiction. Care should also be taken to ensure that all communications with, and documents produced by, the enquiry agents are covered by litigation privilege; in other words, they should be confidential and made for the dominant purpose of litigation that is pending, reasonably contemplated or existing.

Case study: Norwich Pharmacal relief

Shop USA instructs local counsel with a view to applying to the Jersey courts for Norwich Pharmacal relief (*see "Norwich Pharmacal orders" in the main text*). Jersey takes a similar, but not identical, position to English law in respect of such relief (the relevant principles were discussed in *New Media Holding Company LLC v Capita Fiduciary Group Limited [2010] JRC 117*).

Although there are possible innocent explanations for Mr X's trips to Jersey, local counsel conducts inquiries and discovers that Mr X and Mr Y are both directors of a Jersey incorporated company. In light of this further evidence of unexplained collusion, the Jersey court grants an order for the bank to pass Mr X's banking records and statements to Shop USA. These documents reveal that Mr X has recently received around £5 million from Supply UK's bank account in the British Virgin Islands. However, there is now no money left in Mr X's Jersey account.

The Jersey bank records provide very strong evidence of a fraudulent arrangement between Mr X and Mr Y or Supply UK to artificially increase the price of the relevant goods and to share the proceeds between them. Shop USA calculates that it has lost around £10 million as a result of this arrangement.

Freezing injunction

A freezing injunction is appropriate where an applicant is seeking compensation for a wrong and wishes to prevent the dissipation of assets that could be used to satisfy any judgment. Such an order will typically be subject to a financial limit representing the value of the claim, plus interest and costs, and to reasonable exceptions; for example, living expenses and expenses incurred in the ordinary course of business.

Freezing injunctions can apply to all types of assets, including bank accounts and physical assets, provided that the respondents have a legal or beneficial interest in those assets. There have been conflicting recent decisions as to whether a company that is wholly owned by a respondent is subject to a freezing injunction against the respondent (*Group Seven Ltd v Allied Investment Corporation Ltd and others [2013] EWHC 1509 (Ch); Lakatamia Shipping Company v Nobu Su and others [2013] EWHC 1814 (Comm)*).

An applicant would ordinarily apply for such interim measures before proceedings are commenced and without notice to the respondents (although they can be sought at any stage of the proceedings).

The test. In order to obtain a freezing injunction against assets located within the jurisdiction, an applicant must demonstrate that:

- The court has jurisdiction to hear the substantive claim.

- It is just and convenient to grant the freezing injunction. The court will consider the damage that may be caused to the respondent if the injunction were to be granted and, even if all other requirements are met, it will refuse to grant an injunction if it considers that it would not be in the interests of justice. The court will take into account the actions of the applicant, including any undue delay in making the application. (Delay is a very important practical consideration and an applicant needs to be aware that if it is seen to be dilatory in taking necessary steps to preserve assets, the court will find it more difficult to accept the proposition that there is a real risk of dissipation (*see below*)).

- There is a substantive cause of action. A freezing injunction cannot be a substantive cause of action, so the court will only grant a freezing injunction if there are underlying court proceedings that have been, or are about to be, brought (*Fourie v Le Roux [2007] UKHL 1*). However, the courts may grant injunctions to assist foreign proceedings (under section 25 of the Civil Jurisdiction and Judgments Act 1982) and may, in certain circumstances, grant injunctions against third parties to the dispute if there is reason to believe that the assets in their possession are, in reality, the property of the defendant (*TSB Private Bank International SA v Chabra [1992] 1 WLR 231*).

- It has a good arguable case. The case must be one that is more than barely capable of serious argument, but need not be one that the court believes has a better than 50% chance of success (*Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft mBH und Co KG (The 'Niedersachsen') [1983] 2 Lloyd's Rep. 600*).

- The respondent has assets within the jurisdiction. It is not necessary to prove that such assets exist, but there

Case study: preserving assets

Shop USA is advised to take immediate steps to locate and preserve the assets of each of Mr X, Mr Y and Supply UK in anticipation of the imminent issuing of claims against them in the English courts.

Shop USA is already aware of Supply UK's account in the British Virgin Islands (BVI), and so instructs local counsel to advise on applying directly to the BVI court for a freezing injunction against the account and an ancillary order for disclosure of information on Supply UK's assets (BVI law follows a similar position to English law regarding the granting of freezing injunctions in support of foreign proceedings (*see Black Swan Investment ISA v Harvest View Limited BVIHCV 2009/399 and Yukos CIS Investments Limited and others v Yukos Hydrocarbons Investments Limited and others HCVAP 2010/028*)). The BVI court grants the freezing injunction and the disclosure order, and the bank subsequently reveals that Supply UK has £3 million in its BVI account.

At the same time, Shop USA instructs a firm of enquiry agents to identify additional assets belonging to Mr X, Mr Y and Supply UK. As a result of these investigations, Shop USA finds that:

- Mr X has bought a £3 million yacht in Cannes. Shop USA instructs local counsel and successfully applies to the French court for an interim injunction (*saisie-conservatoire*) against the yacht (in accordance with Article 31 of the Brussels Regulation (*44/2001/EC*), the French courts can order preliminary freezing orders regardless of whether the substantive proceedings are to be brought in France).

- Mr Y has recently moved into a new house worth £2 million registered in his wife's name but paid for by Supply UK. Shop USA applies to the English court to join Mrs Y as a defendant to the proceedings and to make a freezing order against her in respect of the property, in accordance with the principles set out in *TSB Private Bank International SA v Chabra* and subsequent case law (*[1992] 1 WLR 231*). Having obtained an injunction, Shop USA seeks a preliminary hearing in which it is determined that the property is beneficially owned by Mr Y or Supply UK, rather than by Mrs Y.

- Mr Y personally owns the commercial premises used by Supply UK, worth £4 million. Shop USA applies for, and is granted, a freezing injunction against Mr Y in respect of this property.

In addition, ancillary to the freezing injunction applications against Mr and Mrs Y, Shop USA makes an application for disclosure of further information regarding their assets under Civil Procedure Rule 25.1(g). Mr Y discloses no further information. Mrs Y, mindful of the threat of being held in contempt of court, discloses details of Mr Y's English bank account, which contains £500,000. These funds are made subject to the freezing order against Mr Y and committal proceedings are commenced against him.

As a result of the above measures, Shop USA has now identified and preserved £12.5 million of assets. This is expected to be sufficient to satisfy an award for damages, plus interest and costs.

must be evidence from which it can be inferred that there are assets within the jurisdiction, and such known or suspected assets should be identified to the extent possible (whether or not their value is known at that time).

- There is a real risk that the respondent may dissipate the assets. This is an objective test, so the court will look to the consequences of the respondent's anticipated actions, rather than its intent. The applicant must satisfy the court that there is real risk of dissipation (or any other dealing in the assets that may hinder enforcement), not a mere probability (*Caring Together Ltd v Bauso and others [2006] EWHC 2345 (Ch)*).

The applicant will generally be required to give an undertaking to the court to compensate the respondent and/or third parties for losses caused by the freezing injunction if it is subsequently found that the injunction was wrongly granted, and to reimburse the reasonable costs incurred by third parties as a result of the injunction.

Assets outside the jurisdiction. It has been established that English courts can grant freezing injunctions in respect of assets outside the jurisdiction (*Derby & Co Ltd and others v Weldon and others (No 6) [1990] 1 WLR 1139*). This is known as a worldwide freezing order (WFO). The test for a WFO is very similar to that for a domestic freezing injunction, but the applicant must demonstrate that the respondent does not have sufficient assets within the jurisdiction to satisfy a judgment in the substantive claim and that the respondent has assets outside the jurisdiction.

It should be noted that a freezing order acts against the respondent personally. It therefore creates no security interest in any frozen assets and cannot restrict the behaviour of parties outside the jurisdiction of the English court (*see box "Freezing injunctions in arbitration"*). Therefore, once a WFO has been obtained, the applicant will need to apply to the courts of the jurisdictions in which the respondent's assets are located in order to enforce the WFO.

This process can be problematic. In the EU, while applicants may apply for recognition and enforcement of extra-territorial protective measures in accordance with Article 31 and Chapter III of the Brussels Regulation (*44/2001/EC*) (or the 2007 Lugano Convention (Lugano Convention)), such relief will not be available if the order was granted ex parte (*Bernard Denilauler v SNC Couchet Frères, C-125/79*).

In jurisdictions outside the scope of the Brussels Regulation or Lugano Convention, the treatment of English WFOs and the procedure for their recognition and enforcement will be a matter of local law and local counsel should be consulted. The likelihood will be that a local injunction will be required (although such an application may be assisted by the existence of a similar order from the English High Court).

A freezing order can have a huge impact on the business or personal life of the respondent, and a WFO can be particularly disruptive as it spawns numerous related external proceedings in various different jurisdictions. As such, and in order to avoid causing any undue oppression to the respondent, the WFO will be subject to a condition requiring the applicant to obtain the permission of the English court before the WFO is enforced in another jurisdiction. These applications should generally be made with notice to the respondent and should contain all the information necessary to enable the court to make an informed decision, including evidence as to the applicable law and practice of the foreign court.

The *Dadourian* guidelines set out the approach of the court in considering whether to permit a party to enforce a WFO abroad (*Dadourian Group v Simms [2006] EWCA Civ 399*).

There is a proposal for an EU regulation creating a European Account Preservation Order (EAPO), which will provide a straightforward procedure to freeze a respondent's EU bank accounts (*www.practicallaw.com/0-508-4339*). Under the proposed regulation, an applicant will be able to freeze funds in the respondent's bank account up to the value of its debt plus interest and, if a judgment has been obtained, costs. The applicant will need to establish that it has a well founded claim and that, without the issue of the order, the subsequent enforcement of an existing or future judgment against the defendant is likely to be impeded or made substantially more difficult.

The UK government has said that it would not opt into the proposal and has highlighted several key concerns with the proposal, although it hopes that sufficient changes will be made to enable a post-adoption opt-in.

Proprietary injunctions

A proprietary injunction is an alternative means of preserving the respondent's assets. It is appropriate where the applicant asserts

Freezing injunctions in arbitration

The position of the applicant that seeks a freezing injunction in support of arbitral proceedings is not entirely clear. The arbitral tribunal has no inherent power to grant a freezing injunction. However, it is arguable that the parties may be free to agree that the tribunal should have such power by virtue of section 39 or section 48(5)(a) of the Arbitration Act 1996 (1996 Act) (see, for example, Rix LJ's discussion in *Kastner v Jason & Ors [2004] EWCA Civ 1599*). Even if a tribunal does have the power to grant a freezing injunction, it would lack the coercive power to enforce such an injunction against third parties. As a result, applicants should be wary of applying to an arbitral tribunal for such relief.

However, under sections 44(1) and 44(2)(e) of the 1996 Act, an applicant may apply to court for an interim injunction (or for the appointment of a receiver) in support of arbitral proceedings. Section 44 is non-mandatory, and so the arbitration agreement should be checked to ensure that it has not been specifically excluded.

In most cases, an application to court for interim measures will require the permission of the tribunal or the agreement in writing of the other parties (*section 44(4), 1996 Act*). However, in cases of urgency (as with most freezing injunctions), such permission or agreement is not necessary (*section 44(3), 1996 Act*) (section 44(3)). Applications under section 44(3) can also be made by proposed parties to an arbitration, so such applications can be made before the arbitration has begun (to avoid giving notice to the proposed defendant).

a proprietary interest against certain of the respondent's assets (or their proceeds), and such injunctions are therefore commonly sought in cases alleging fraud.

There are several advantages in applying for a proprietary order; for example, there is no requirement to establish a risk of dissipation, and a proprietary injunction may still be available if there has been a delay in making an application that may result in a freezing injunction being refused.

The test for a proprietary injunction is as follows:

- The applicant must establish that there is an arguable case.
- The court should then consider the balance of convenience (applying the *American Cyanamid* principles (*American Cyanamid v Ethicon Limited [1975] AC 396*)).
- If the balance of convenience is evenly balanced, the court will take into account the merits of the applicant's case (*Polly Peck International plc v Nadir [1992] EWCA Civ 3; www.practicallaw.com/8-100-4729*).

It can be good practice in appropriate cases to apply concurrently for both a proprietary injunction and a freezing injunction in order to take advantage of the benefits of both types of order. For example, both proprietary and freezing injunctions were granted in *Madoff Securities International Ltd v Raven and others*, due to uncertainty over whether the claimant would be able to identify and trace the specific assets that would be subject to the proprietary order (*[2011] EWHC 3102 (Comm); www.practicallaw.com/2-517-3301*).

ENFORCEMENT

The methods employed to enforce a judgment will depend on whether it is being enforced abroad or domestically. Enforcement should be straightforward where appropriate interim relief has been obtained to preserve the defendant's assets, but the process will be more complicated where this is not the case (*see box "Case study: enforcement"*).

Recognition overseas

A judgment creditor seeking recognition and enforcement of an English judgment abroad may look to take advantage of one of a number of international agreements providing for the reciprocal recognition of judgments.

While obtaining recognition will often be straightforward, there are certain potential difficulties of which claimants should be aware. For example, some jurisdictions might refuse to recognise or enforce English summary judgments, or require a retrial on the merits. Also, some jurisdictions impose a court fee calculated as a percentage of the total claim, which, in large claims, can present a significant risk to the claimant where it is not clear that recognition or enforcement steps will ultimately be successful.

Brussels Regulation and Lugano Convention. The Brussels Regulation regulates the reciprocal enforcement arrangements between EU member states. The analysis of the Brussels Regulation in this article can be taken to apply equally to the Lugano Convention, which adopts a very similar regime between the EU member states and Iceland, Switzerland and Norway.

The Brussels Regulation enables a judgment creditor to obtain recognition and enforcement of judgments in other member states without the further delay, expense and uncertainty of issuing fresh proceedings in those other states. The types of judgment to which the Brussels Regulation applies include

Case study: enforcement

Having identified and preserved valuable assets that will be available to satisfy any judgment, Shop USA progresses substantive proceedings in the English courts. The English court accepts jurisdiction to hear the consolidated proceedings and, in light of the clear evidence against the defendants, Shop USA applies for, and obtains, summary judgment for £12.5 million, representing its total losses incurred as a result of the defendants' fraudulent arrangement, plus accrued interest and costs.

With the benefit of a prompt and well-planned strategy, Shop USA has ensured that sufficient assets belonging to the defendants have been protected by interim measures in England, the British Virgin Islands (BVI) and France. As a result, Shop USA can avoid lengthy and costly enforcement proceedings and can instead pursue a more straightforward process in which the English judgment is recognised in the relevant jurisdictions and appropriate orders made for the transfer of the protected assets (or their proceeds) to Shop USA.

However, if Shop USA had not been in a position to obtain interim measures against the defendants, it would have been a far more difficult and uncertain path to successful enforcement. In particular, the defendants may have taken a series of steps to secrete or remove their assets well before any judgment was obtained.

Shop USA could, in theory, have pursued a range of enforcement measures against the defendants' assets, including:

- In England, writs of fieri facias (more usually known as fi fa) against the residential property registered in Mrs Y's name (but beneficially owned by Mr Y or Supply UK) and the commercial premises owned by Mr Y, and a third-party debt order against Mr Y's English bank account.
- In France, an application for recognition of the English judgment under the Brussels Regulation (*44/2001/EC*), and for a *saise-vente* order for the seizure and sale of Mr X's yacht.
- In the BVI, an application for recognition of the English judgment under the BVI's Reciprocal Enforcement of Judgment Act 1922, and for enforcement measures against Supply UK's BVI bank account.

However, it is likely, in reality, that these assets would have been put beyond Shop USA's reach if they had not been protected by interim measures.

not just final judgments, but also orders for costs, injunctions (but not injunctions issued without notice to the respondent, as is the case with most freezing injunctions until an inter partes hearing has taken place) and orders for specific performance.

The precise procedure for enforcement under the Brussels Regulation will differ in each member state and local counsel should always be instructed. In general, the judgment creditor will make a without notice application to the appropriate body in the relevant member state as listed in Annex II to the Brussels Regulation (or the Lugano Convention). The judgment creditor will typically need to produce a copy of the judgment, a certificate as set out in Annex V to the Brussels Regulation (or the Lugano Convention), and certified translations of these and any other documents required by local law.

The member state must declare the judgment to be enforceable immediately on completion of the above formalities, and the judgment debtor should be given notice of the declaration. The debtor may then appeal this decision under one of the grounds in Articles 34 and 35 of the Brussels Regulation.

An amended Brussels Regulation will apply from 10 January 2015 containing a more streamlined procedure for the recognition and enforcement of judgments (*see News brief "Brussels Regulation: the Commission's proposals for reform", www.practicallaw.com/0-504-5668*).

Other international agreements. A simplified process may be available where there has been an uncontested claim, such as a claim to which the debtor never objected, or to which the debtor initially objected but subsequently agreed to a consent order or failed to appear, and the claimant is seeking enforcement in a member state. In such a situation, the claimant can apply for a European Enforcement Order certificate which, if granted, means that the judgment will be treated as if it had been delivered in the jurisdiction in which enforcement is sought (under the European Enforcement Order Regulation (*805/2004/EC*)). Such a process will generally be quicker and easier than an application under the Brussels Regulation.

Reciprocal arrangements are also in place with various countries under either the Administration of Justice Act 1920 (which covers certain Commonwealth, and other former colonial, countries) or the Foreign Judgments (Reciprocal Enforcement) Act 1933 (which covers several other significant jurisdictions, including India, Australia and Canada).

If there is no international treaty or convention in place allowing for simple registration of a foreign judgment, then it will be necessary to look to the local law of the enforcing country in order to seek recognition of the judgment. For example, when a claimant is seeking recognition of a US judgment in England, the general practice is to issue a simple debt claim and to seek summary judgment.

Whatever the situation, it will always be necessary to instruct local counsel in order to navigate the procedural hurdles in obtaining recognition of judgment (*see box "Recognition of arbitral awards"*).

Domestic enforcement

If the judgment debtor has been given an opportunity to pay the judgment debt and has failed to do so (and assuming that no stay of execution has been ordered pending an application for appeal or to set aside the judgment), the creditor may proceed to enforce the judgment against the debtor's domestic assets.

The key enforcement actions that can be taken are summarised below. Difficulties in pursuing such measures may arise if the judgment debtor becomes insolvent (for example, as a result of the judgment against it). Most judgment creditors will not have any security against the debtor's assets and will rank pari passu with other unsecured creditors, and will generally need the permission of the court to pursue any action or proceeding against the debtor or its assets. This can severely limit the potential recovery.

Writs of fieri facias. A writ of fieri facias (a writ of fi fa) has the effect of securing the amount owed under the judgment against the debtor's property, and can attach to most forms of personal property capable of seizure and sale by an enforcement officer.

Certain exempt goods cannot be seized; for example, certain personal items. Such an order can be made against both individuals and companies and can be very useful where the debtor holds significant property in the jurisdiction; most commonly, a personal residence or commercial premises.

The procedure is generally very straightforward and, unlike most other methods of enforcement, does not generally require judicial permission. Writs of fi fa are the most popular means of enforcement but, with very large claims, the debtor will rarely have sufficient property to satisfy the entire judgment and the claimant must look to other methods.

Recognition of arbitral awards

One of the main reasons why parties choose to include arbitration agreements in commercial contracts is to take advantage of the favourable enforcement regime applicable to arbitral awards.

Under the New York Convention (the Convention) (which has been ratified by 149 states), an arbitral award made in one state is recognised as binding in any other state in which enforcement is sought, and the award is enforced as if it had been made in that state. This means that it is generally a more straightforward process to seek international recognition and enforcement of an arbitral award than a judgment of a state court. Therefore, where a party is entering into a contract with a counterparty that is likely to have assets overseas, it would be worth considering including an arbitration agreement in order to allow for easier enforcement in the event of a dispute.

There are limited grounds on which a Convention state may refuse to recognise and enforce an arbitral award made in another country; for example, states may stipulate that they will only apply the Convention to arbitral awards made in other contracting states, or to awards arising out of commercial relationships.

While recognition and enforcement under the Convention should, in theory, be relatively straightforward, protectionist tendencies and corruption in certain jurisdictions can lead national courts to discriminate in favour of local companies and refuse to enforce foreign arbitral awards.

Third-party debt orders. Third-party debt orders ensure that any amounts owed to the judgment debtor by third parties are instead paid to the judgment creditor, and are most commonly used to seize funds in the debtor's bank account. The third-party debt is discharged on payment to the judgment creditor. A judgment creditor can apply for an order requiring a judgment debtor to attend court to provide information on such debts under CPR 71.

Third-party debt orders avoid the practical difficulties of seizing and selling physical assets, but they cannot generally attach to foreign debts or joint bank accounts (unless all the account holders are liable for the judgment debt), and it can be problematic in practice to obtain hard evidence of the debtor's bank accounts and other debts.

Certain types of debt cannot be made subject to a third-party debt order; most importantly, an individual's salary. A claimant seeking to attach future earnings must seek an attachment of earnings order (*see below*).

Attachment of earnings. An attachment of earnings order compels a judgment debtor's employer to make payments to the court out of the debtor's salary or wages. This is then paid to the creditor in satisfaction of the judgment debt. Such an order can also attach to an individual's pension (but not the state pension). However, an attachment of earnings order will not be available in respect of corporate debtors, or if an individual is unemployed or self-employed.

Applications must be made to the County Court, but can be made in respect of High Court judgments. While this is a relatively straightforward method of enforcement, and one that does not rely on payments being made by the debtor, it will usually be of little use to a claimant where the amount owed under the judgment debt is very large.

Charging orders. Charging orders have the effect of securing an amount owed by a judgment debtor by way of an equitable charge over certain types of property, including land, dividends and interest, funds in court and securities of domestic companies. The charge is subject to any prior charges on the property.

Charging orders may not be available where the property is jointly owned or occupied, and the procedure for a charging order is not straightforward: the judgment creditor must generally apply first for an interim, and then a final, order, and lastly for a separate order for sale in order to realise the funds. However, this can be an advantage in some cases; for example, in a rising market, a creditor can choose to wait for property prices to increase before applying for the order for sale.

Appointment of receiver. The court may appoint a receiver by way of equitable execution if it considers it to be just and convenient to do so. This will only be used where there are particular types of debts that other enforcement measures cannot reach; for example, future debts, foreign debts, or debts that require some action on the part of the judgment debtor, such as the enforcement of contractual rights. However, the circumstances in which such a receiver would be needed are very limited and they are rarely used in practice.

Liquidation or bankruptcy. It may be appropriate for a claimant to start insolvency proceedings in certain circumstances; for example, if it is thought that the threat of such actions would encourage payment of the debt, or if a liquidator is needed to bring legal proceedings on behalf of the judgment debtor.

However, claimants should be very careful about using liquidation or bankruptcy as a method of enforcement, particularly if the judgment debtor has, or may have, other significant creditors. There is likely to be considerable delay before any eventual recovery, and the fees of the liquidators will take priority over the payment of the judgment debt. In addition, courts will be reluctant to allow such an application where the debtor has a genuine counterclaim against the claimant, and may not have jurisdiction to do so in respect of a company whose centre of main interests is overseas.

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