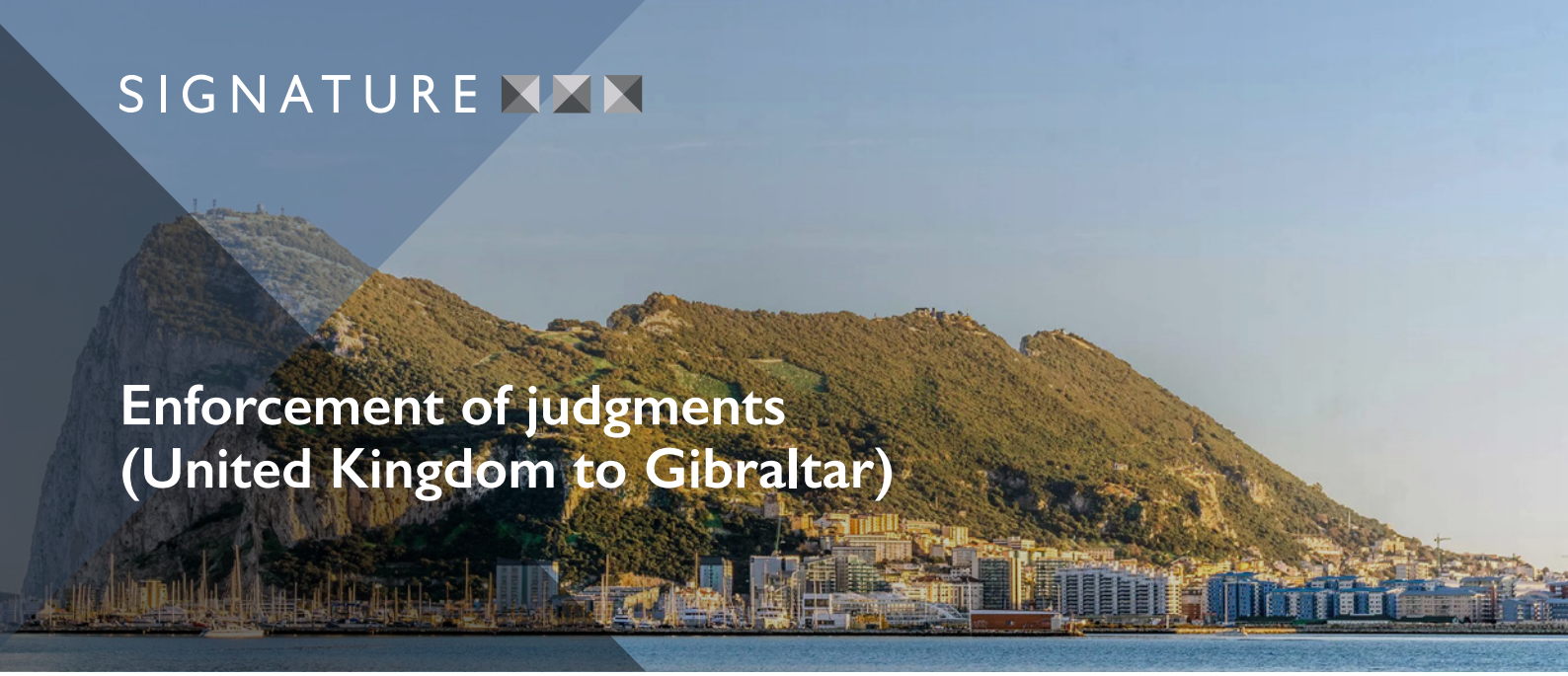
SIGNATURE



Enforcement of judgments (United Kingdom to Gibraltar)

Pre-Brexit Enforcement of an English judgment in Gibraltar

Prior to the United Kingdom's withdrawal from the European Union, an English judgment could be enforced in Gibraltar pursuant to Regulation (EU) No 1215/2012 of the European Parliament and of the Council ("The Regulation"). This was possible despite Gibraltar not being an EU member state, as section 39 of the Civil Jurisdiction and Judgments Act 1993 of Gibraltar provides that Gibraltar and the UK shall be treated as if each were a separate state for the purpose of the Regulation.

Under the Regulation, a party wishing to enforce an English judgment in Gibraltar could request an English Court to issue a Certificate pursuant to article 53, which certifies that the judgment was enforceable and containing an extract of that judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. The Certificate was later filed before a court in Gibraltar, and the judgment, except for certain exceptions, would then be automatically recognised and/or become enforceable.

Post-Brexit Enforcement of an English judgment in Gibraltar

The Regulation applied to the UK during the transition period (31 January 2020 - 31 December 2020) but stopped applying to the UK at the end of the transition period by section 89 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019. However, the Regulation was retained in Gibraltar as part of its domestic law by section 6 of the European Union (Withdrawal) Act 2019.

Because of the UK not applying the Regulation anymore, the English Courts no longer issue an article 53 Certificate, but they do however issue certificates pursuant to section 12 of the Civil Jurisdiction and Judgments Act 1982 of England and Wales ("English CJJ Act").

The above raised the question as to whether a party, who is unable to obtain the Certificate required under the Regulation, can rely on a section 12 Certificate under the English CJJ Act to enforce an English judgment in Gibraltar? If not, what other requirements will a party need to meet to enforce an English judgment in Gibraltar?

The aforesaid question was recently put before the Supreme Court of Gibraltar in the case of Terry Edgar v Aitchison Associates Ltd and ANOR 2023/GSC/013, where the claimant sought a declaration that he was able to enforce a judgment of the English High Court by relying on a certificate issued under section12 of the English CJJ Act.

In essence, the Judgment of the Gibraltar Supreme Court concluded that a section 12 Certificate is, for all intents and purposes, identical in substance to the article 53 Certificate: 'All the information required by an article 53 Certificate is contained in the section 12 Certificate and the claim form.' The name may have changed, but the effect is the same.

The Judge further concluded that section 12 is arguably of more assistance in the context of enforcement of judgments between England and Gibraltar.

As it is anticipated that the impact of Brexit will lead to a significant decoupling of UK law and EU law over time, the Supreme Court of Gibraltar's judgment is welcome as it provides clarity as to the mechanism a party needs to follow to enforce an English judgment in Gibraltar.

Looking ahead, how might this judgment matter for parties in future enforcement? Should a party wish to enforce an English judgment in Gibraltar, they would be advised to seek a section 12 Certificate from the English Court which will now be recognised by the Gibraltar Court.

Signature Litigation has offices in London, Gibraltar and Paris, and is the only firm dedicated to complex high value commercial litigation on the Rock.

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