

■ **Service (England & Wales): Hague Service Convention**

Formal:

- Designated Central Authority: Senior Master in E&W
- written request from consular of/competent authority in RF (+E translation) **Article 10(b)**
- 2 copies of document to be served (+ E translation (x2))

Informal:

- Service by post (directly by interested person or through E solicitor): **Articles 10(a) and 10(c)**

Interim remedies (England & Wales)

Litigation:

- **s25(1) Civil Jurisdiction and Judgments Act 1982:**

Interim relief may be granted where [foreign] proceedings have been commenced or are to be commenced

- No interim relief if *inexpedient* (s.25(2)).

- 2 stage test:

(i) would interim relief be granted in E proceedings?

(ii) does the fact that E Ct does not have Juris. = *inexpedient*?

Expediency test:

- Real connecting link?
(i) Domicile (ii) Assets (iii) Other connecting factor (***Duvalier***).
- Interference with case management?
- Disharmony?
- Potential Jurisdiction challenge?
- Enforceability?

Available relief:

- freezing injunction (disclosure order)
- search and seizure
- delivery, detention, preservation of property
- inspection of property
- sample of property
- experiment on property
- payment of income from property

Contempt:

- imprisonment (up to 2 years)
- unlimited fine.

Arbitration:

- Similar power (s.44 Arbitration Act 1996 (“AA”))
- Urgent cases: prior to commencement of Arbitration
- Relief granted only to the extent that the Tribunal does not have the power/unable to act effectively.
- Further restrictions:
 - (i) agreement that court is not entitled to exercise that power
 - (ii) fact seat outside E = inappropriate to exercise power

Obtaining evidence (England & Wales) - Hague Convention on the Taking of Evidence Abroad

- Request by (on behalf) of foreign court/tribunal
- Civil/commercial proceedings instituted before that court (or contemplated)
- Evidence sought is admissible for anticipated trial
- Requested steps could be undertaken in E civil case

Specific powers:

- Examination orally or in writing
- Production of documents
- Inspection, photographing, preservation, custody, detention of property
- Samples of/experiment on property

Enforcement of court judgments (England & Wales)

- Common law jurisdiction to enforce foreign judgment that is:
 - *final and conclusive*
 - *on the merits*
 - *involves the payment of money*

- Fresh proceedings

- Summary judgment

Defences:

- Foreign court acted without jurisdiction
- Breach of natural justice
- Fraud
- Public Policy
- Irreconcilable previous judgment
- Proceedings breached dispute resolution agreement