Civil Jurisdiction and Judgments Act 1982

1982 CHAPTER 27

PART V

SUPPLEMENTARY AND GENERAL PROVISIONS

Domicile

41 Domicile of individuals

(1) Subject to Article 52 (which contains provisions for determining whether a party is domiciled in a Contracting State), the following provisions of this section determine, for the purposes of the 1968 Convention and this Act, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Contracting State.

(2) An individual is domiciled in the United Kingdom if and only if—

(a) he is resident in the United Kingdom ; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom.

(3) Subject to subsection (5), an individual is domiciled in a particular part of the United Kingdom if and only if—

(a) he is resident in that part; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with that part.

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he—

(a) is domiciled in the part of the United Kingdom in which that place is situated ; and

(b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of subsection (3)(b) are not satisfied in relation to any particular part of

the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who—

(a) is resident in the United Kingdom, or in a particular part of the United Kingdom ; and

(b) has been so resident for the last three months or more,

the requirements of subsection (2) (b) or, as the case may be, subsection (3)(b) shall be presumed to be fulfilled unless the contrary is proved.

(7) An individual is domiciled in a state other than a Contracting State if and only if—

(a) he is resident in that state ; and

(b) the nature and circumstances of his residence indicate that he has a substantial connection with that state.

42 Domicile and seat of corporation or association

(1) For the purposes of this Act the seat of a corporation or association (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where a corporation or association has its seat—

(a) for the purpose of Article 53 (which for the purposes of the 1968 Convention equates the domicile of such a body with its seat); and

(b) for the purposes of this Act other than the provisions mentioned in section 43(1)(b) and (c).

(3) A corporation or association has its seat in the United Kingdom if and only if—

(a) it was incorporated or formed under the law of a part of the United Kingdom and has its registered office or some other official address in the United Kingdom ; or

(b) its central management and control is exercised in the United Kingdom.

(4) A corporation or association has its seat in a particular part of the United Kingdom if and only if it has its seat in the United Kingdom and—

(a) it has its registered office or some other official address in that part; or

(b) its central management and control is exercised in that part; or

(c) it has a place of business in that part.

(5) A corporation or association has its seat in a particular place in the United Kingdom if and only if it has its seat in the part of the United Kingdom in which that place is situated and—

(a) it has its registered office or some other official address in that place ; or

(b) its central management and control is exercised in that place; or

(c) it has a place of business in that place.

(6) Subject to subsection (7), a corporation or association has its seat in a state other than the United Kingdom if and only if—

(a) it was incorporated or formed under the law of that state and has its registered office or some other official address there; or

(b) its central management and control is exercised in that state.

(7) A corporation or association shall not be regarded as having its seat in a Contracting State other than the United Kingdom if it is shown that the courts of that state would not regard it as having its seat there.

(8) In this section—

" business " includes any activity carried on by a corporation or association, and " place of business " shall be construed accordingly;

" official address ", in relation to a corporation or association, means an address which it is required by law to register, notify or maintain for the purpose of receiving notices or other communications.

43 Seat of corporation or association for purposes of Article 16(2) and related provisions

(1) The following provisions of this section determine where a corporation or association has its seat for the purposes of—

(a) Article 16(2) (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs);

(b) Articles 5A and 16(2) in Schedule 4 ; and

(c) Rules 2(12) and 4(1)(b) in Schedule 8.

(2) A corporation or association has its seat in the United Kingdom if and only if—

(a) it was incorporated or formed under the law of a part of the United Kingdom ; or

(b) its central management and control is exercised in the United Kingdom.

(3) A corporation or association has its seat in a particular part of the United Kingdom if and only if it has its seat in the United Kingdom and—

(a) subject to subsection (5), it was incorporated or formed under the law of that part; or

(b) being incorporated or formed under the law of a state other than the United Kingdom, its central management and control is exercised in that part.

(4) A corporation or association has its seat in a particular place in Scotland if and only if it has its seat in Scotland and—

(a) it has its registered office or some other official address in that place ; or

(b) it has no registered office or other official address in Scotland, but its central management and control is exercised in that place.

(5) A corporation or association incorporated or formed under—

(a) an enactment forming part of the law of more than one part of the United Kingdom ; or

(b) an instrument having effect in the domestic law of more than one part of the United Kingdom,

shall, if it has a registered office, be taken to have its seat in the part of the United Kingdom in which that office is situated, and not in any other part of the United Kingdom.

(6) Subject to subsection (7), a corporation or association has its seat in a Contracting State other than the United Kingdom if and only if—

(a) it was incorporated or formed under the law of that state; or
(b) its central management and control is exercised in that state.

(7) A corporation or association shall not be regarded as having its seat in a Contracting State other than the United Kingdom if—
(a) it has its seat in the United Kingdom by virtue of subsection (2) (a); or
(b) it is shown that the courts of that other state would not regard it for the purposes of Article 16(2) as having its seat there.

(8) In this section " official address " has the same meaning as in section 42.

44 Persons deemed to be domiciled in the United Kingdom for certain purposes

(1) This section applies to—
(a) proceedings within Section 3 of Title II of the 1968 Convention (insurance contracts), and
(b) proceedings within Section 4 of that Title (consumer contracts).

(2) A person who, for the purposes of proceedings to which this section applies arising out of the operations of a branch, agency or other establishment in the United Kingdom, is deemed for the purposes of the 1968 Convention to be domiciled in the United Kingdom by virtue of—
(a) Article 8, second paragraph (insurers); or
(b) Article 13, second paragraph (suppliers of goods, services or credit to consumers),

shall, for the purposes of those proceedings, be treated for the purposes of this Act as so domiciled and as domiciled in the part of the United Kingdom in which the branch, agency or establishment in question is situated.

45 Domicile of trusts

(1) The following provisions of this section determine, for the purposes of the 1968 Convention and this Act, where a trust is domiciled.

(2) A trust is domiciled in the United Kingdom if and only if it is by virtue of subsection (3) domiciled in a part of the United Kingdom.

(3) A trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has its closest and most real connection.

46 Domicile and seat of the Crown

(1) For the purposes of this Act the seat of the Crown (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where the Crown has its seat—
(a) for the purposes of the 1968 Convention (in which Article 53 equates the domicile of a legal person with its seat); and
(b) for the purposes of this Act.

(3) Subject to the provisions of any Order in Council for the time being in force under subsection (4)—

(a) the Crown in right of Her Majesty's government in the United Kingdom has its seat in every part of, and every place in, the United Kingdom ; and

(b) the Crown in right of Her Majesty's government in Northern Ireland has its seat in, and in every place in, Northern Ireland.

(4) Her Majesty may by Order in Council provide that, in the case of proceedings of any specified description against the Crown in right of Her Majesty's government in the United Kingdom, the Crown shall be treated for the purposes of the 1968 Convention and this Act as having its seat in, and in every place in, a specified part of the United Kingdom and not in any other part of the United Kingdom.

(5) An Order in Council under subsection (4) may frame a description of proceedings in any way, and in particular may do so by reference to the government department or officer of the Crown against which or against whom they fall to be instituted.

(6) Any Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Nothing in this section applies to the Crown otherwise than in right of Her Majesty's government in the United Kingdom or Her Majesty's government in Northern Ireland.