

Forum shopping? The case for litigating in Ireland

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As business has become increasingly global, the selection of an appropriate choice of governing law and jurisdiction to determine disputes arising from commercial contracts is of growing importance. It is an issue which can, and often does, significantly affect the outcome of the legal process. Dillon Eustace’s head of litigation, Kieran Cowhey, and partner John O’Riordan consider what Ireland has to offer to entities in the UK as a legal forum, particularly post-Brexit.

Due to its procedural effectiveness and clarity, common law jurisdictions are often chosen for cross-border commercial contracts and arbitrations, and many international contracts, often with little or no link to the UK, have traditionally provided that they are governed by English law and are subject to the jurisdiction of the English courts. Up to now, those contracts have also enjoyed the benefit of European Union regulations which enable judgments to be recognised and enforced throughout EU member states.

However, following Brexit, and particularly a no-deal Brexit, there is likely to be considerable uncertainty in relation to both the service of UK proceedings within the EU and also more importantly, the mutual recognition and enforcement of judgments. In those circumstances, parties to a contract with an EU interest may wish to choose a different legal forum in which to litigate or arbitrate. Ireland is in many ways the obvious alternative choice. Post-Brexit, Ireland will be the only English-speaking common law jurisdiction within the EU and its legal system enjoys the following particular benefits:

- 1) Irish judges are selected from the ranks of our most senior legal practitioners and are internationally respected for their integrity, experience, commercial awareness and independence.
- 2) Ireland has a specialist fast-track commercial list within the High Court to handle high-value, complex business disputes on an expedited basis. This commercial court has dramatically reduced timelines by imposing rigorous case management, concluding many commercial cases within a matter of weeks or a few months.
- 3) The Irish Court of Appeal, which was established in 2014 to hear all appeals except those of major public importance, or where the interests of justice otherwise require an appeal to the Supreme Court, also has significant case management powers and reduced timelines for appeals. The number of Court of Appeal judges will increase by 50% in the coming months, which will further increase its speed and efficiency.
- 4) Ireland has dedicated world-class arbitral facilities and a well-established body of accredited arbitrators. Arbitration is frequently employed in Ireland, particularly in insurance, construction and property disputes. The Arbitration Act, 2010 applies the UNCITRAL Model Law and provides

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a strong framework for resolving disputes with an independent arbitrator. Recourse to the courts during arbitration is very limited and there is no appeal from a decision of the dedicated arbitration judge of the High Court so delays are avoided. Ireland also has a large number of accredited mediators and special recognition is given to mediation in the Irish courts by virtue of the Mediation Act, 2017 which provides that the Irish courts may suspend proceedings, even after litigation commences, to allow parties to mediate.

The speed and efficiency of the Irish courts was perfectly illustrated in *Law Society of Ireland v The Motor Insurers' Bureau of Ireland (MIBI)* [2017] in which MIBI, represented by Dillon Eustace, won its case, arising from the collapse of Setanta Insurance. This case commenced in the High Court and was appealed initially to the Court of Appeal and subsequently, due to an issue of significant public importance, to the Supreme Court. It was dispatched by all three of the highest courts in Ireland within the space of two years with the following timeline:

- April 2015: Proceedings issued in the High Court.
 - September 2015: Judgment delivered by the High Court.
 - October 2015: Appeal lodged in Court of Appeal.
 - March 2016: Judgment delivered by Court of Appeal.
 - April 2016: Appeal lodged in Supreme Court.
 - May 2017: Judgment delivered by the Supreme Court.
- Had the above case not involved a matter of particular public importance, namely the existence of an administrative agreement between the government and the motor insurance industry, which enabled a further appeal to the Supreme Court, the *Setanta* case would have been issued and heard and an appeal lodged and adjudicated upon within the space of 11 months, a staggeringly efficient outcome for all parties.
- In addition to the speed of resolution of disputes within the Irish legal system, Ireland's continuing membership of the EU provides a legislative framework for the seamless issuing and service of proceedings, the mutual recognition and enforcement of judgments and the availability of interim protective measures (such as the freezing of assets) throughout the EU. Post-Brexit, the UK will not be able to avail of these

helpful EU regulations, and while a detailed discussion of how that might ultimately play out is beyond the scope of this article, it is fair to say that there will be additional complexity, uncertainty, risk, time and cost involved. For example, if a UK judgment is obtained against a corporation with assets spread across the EU, it will potentially be necessary to make separate applications for enforcement in each EU member state.

Parties from any jurisdiction, who wish to ensure that their contracts are the subject of the laws of an EU member state post-Brexit, or that common law courts resolve disputes arising from them, should consider Ireland as an attractive jurisdictional choice. The recognition of Ireland as a favourable jurisdiction for international dispute resolution has already commenced with the International Swaps and Derivatives Association introducing Irish law as an option for parties to its derivative documentation last year to 'future proof' their contracts against the uncertainties presented by Brexit. Ireland is home to a number of world class, international law firms which offer multi-disciplinary legal advice to international businesses and should be strongly considered as an expert and efficient forum in which to do business, and litigate, post-Brexit. ■

Law Society of Ireland v The Motor Insurers' Bureau of Ireland (MIBI) [2017] IESC 31