



## February 2021

### Post-Brexit Enforcement of UK Judgments

A key concern for parties to cross-border litigation within the European Union (EU) has been the manner and extent to which cooperation between the EU and the United Kingdom (UK) in relation to the enforcement of judgments will be maintained post-Brexit. This is particularly the case in Ireland given its very close ties to the UK.

### Enforcement of EU judgments

Enforcement of judgments within the EU is regulated by the Brussels I Regulation (recast) (1215/2012) (**Brussels Recast**). Brussels Recast provides that in most cases a judgment in any EU Member State will be largely automatically recognised in other EU Member States without any 'special procedure' being required (in particular without any declaration of enforceability being required). This greatly reduces the cost, time, complexity and uncertainty of cross-border enforcement within the EU.

### EU-UK Agreements

On 30 January 2020, the EU-UK Withdrawal Agreement was ratified and this agreement remains in force unless a separate agreement is entered into in relation to any of the issues covered by it. Pursuant to this agreement, the UK left the EU on 31 January 2020 and entered into a transition period that lasted until 31 December 2020. During

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the transition period, the Withdrawal Agreement provided that EU Law would continue to apply to the enforcement of all judgments obtained in proceedings that began before 31 December 2020. This means that Brussels Recast applies to such judgments.

The EU-UK Trade and Cooperation Agreement provisionally came into effect on 1 January 2021 (the provisional period will last until 28 February 2021). It had been hoped that this agreement would address jurisdiction and the enforcement of judgments and indeed Part Three provides for “Law Enforcement and Judicial Cooperation”. However, it only deals with criminal matters (including anti-money laundering and counter terrorist financing) and does not amend the provisions of the Withdrawal Agreement in relation to civil and commercial matters.

In light of the above, the question arises how a judgment of a court in the UK in civil proceedings commenced after 31 December 2020 will be enforced in Ireland.

### Lugano Convention

The 2007 Lugano Convention represents a potential solution to the enforcement issues created by Brexit. The Lugano Convention is a treaty between the EU Member States and certain members of the European Free Trade Association, including Switzerland, Iceland and Norway. The Lugano Convention is broadly similar to the position between EU Member States prior to the implementation of Brussels Recast whereby an application has to be made to have the foreign judgment to which the Lugano Convention applies declared enforceable before it can be enforced. From a procedural perspective, an application to have a foreign judgment declared enforceable in Ireland under the Lugano Convention is relatively straightforward.

The UK has applied to accede to the Lugano Convention as a non-EU country, however, unanimous approval from all signatory states is required and, as at the date of writing, the UK’s application has not yet been approved.

### Hague Convention

The good news for commercial disputes is that the UK has successfully acceded in its own right to the 2005 Hague Convention on Choice of Court Agreements with effect from 1 January 2021. The Hague Convention is, however, limited in scope. It applies only to disputes between parties to contracts in civil or commercial matters that contain exclusive choice of court clauses. (A choice of court clause is deemed exclusive unless the parties indicated otherwise.) Therefore, enforcement of judgments under the Hague Convention will only be allowed in certain cases where parties agreed on a choice of court before any dispute arose (though most commercial contracts will include such

an exclusive choice of court clause). In addition, the Hague Convention does not provide for the enforcement of protective measures such as interim injunctions or freezing orders.

Furthermore, the Hague Convention provides that it shall only apply to agreements concluded after its entry into force in the relevant State and specifically does not apply to proceedings instituted prior to the Hague Convention's entry into force in that State. While there is some uncertainty as to when it is considered that the Hague Convention came into force in the UK, the UK and the Hague Conference on Private International Law (HCCH) consider that the Hague Convention entered into force for the UK on 1 October 2015 when it became binding for EU member states and that the UK is a contracting State without interruption from that date, notwithstanding that it became a contracting State in its own right with effect from 1 January 2021.

Where enforcement in Ireland of a UK judgment is sought under the Hague Convention, an application to the court must be made. That application is broadly similar to the procedure under the Lugano Convention whereby an application may be made without notice to the other party and there are limited grounds upon which recognition of the UK judgment can be refused.

An advantage of the Hague Convention is that – in contrast with enforcement at common law – a broader range of judgments can be enforced under it. Only foreign judgments for a definite sum of money may be enforced under the common law rules (see below). Applications for enforcement under the Hague Convention are typically also more straightforward than under the common law rules.

## Foreign Judgments

In any matters that commenced after 1 January 2021 and where none of the above agreements, regulations or conventions apply, the common law of the country where enforcement of a judgment is sought will apply.

In Ireland, the holder of a foreign judgment has two options in terms of having the foreign judgment recognised. The judgment holder can either issue fresh proceedings seeking judgment / orders in Ireland on foot of the same cause of action which has already been determined in the foreign jurisdiction or the judgment holder can make an application, on notice to the judgment debtor, to the Irish courts to have the foreign judgment recognised in Ireland. There are a number of conditions that need to be met however, for the latter option to be successful and the particular circumstances would need to be considered on a case by case basis. Inevitably, there will be a consequential impact on time, cost and complexity as compared to a matter which enjoys the benefit of reciprocity under EU law.

## Foreign Arbitral Awards

Foreign arbitral awards are not governed by the above mentioned agreements, regulations and conventions. Rather, in 2010, Ireland adopted the UNCITRAL Model Law on International Commercial Arbitration (Model Law) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) was given force of law in Ireland. Therefore, pursuant to Article III of the New York Convention, foreign arbitral awards of contracting states to the New York Convention are recognised as binding and enforced in accordance with the rules of procedure in Ireland under the conditions laid down in the New York Convention. The procedure for such recognition and enforcement is relatively straightforward.

## Comment

Unless and until the EU agrees that the UK may accede to the Lugano Convention as a third country, or a separate agreement or convention is entered into between the EU and the UK, the enforcement of EU-UK judgments in matters commencing after 31 December 2020 will inevitably be more complicated. While the Hague Convention may apply to many commercial contract disputes, there will be matters which will fall to be determined by local common law rules. If you require advice in relation to the enforcement in Ireland of an EU or UK judgment please contact a member of our [Commercial Litigation Team](#).

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