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The International Comparative Legal Guide to:

# Enforcement of Foreign Judgments 2017

## 2nd Edition

A practical cross-border insight into the enforcement of foreign judgments

Published by Global Legal Group, with contributions from:

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URL: www.glgroup.co.uk

**GLG Cover Design**
F&F Studio Design

**GLG Cover Image Source**
iStockphoto

**Printed by**
Stephens & George Print Group
March 2017



**ISBN** 978-1-911367-40-6
**ISSN** 2397-1924

**Strategic Partners**

## General Chapters:



## Country Question and Answer Chapters:

# Ireland

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## 1 Country Finder

**1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

| Applicable Law/ Statutory Regime | Relevant Jurisdiction(s) | Corresponding Section Below |
|---|---|---|
| Common Law | Judgments from all countries to which EU Regulation 1215/2012 and the Lugano Convention do not apply (i.e. all countries other than EU countries, Norway, Switzerland and Iceland) | Section 2 |
| EU Regulation 1215/2012 (for relevant proceedings commenced on or after 10 January 2015) | EU countries | Section 3 |
| EC Regulation 44/2001 (for relevant proceedings commenced before 10 January 2015) | EU countries | Section 3 |
| Lugano Convention | EU countries, Norway, Switzerland and Iceland | Section 3 |
| New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 | Arbitration awards rendered in countries which are signatories to the Convention | Section 3 |
| EC Regulation 805/2004 | EU countries where the claims are uncontested | Section 3 |

## 2 General Regime

**2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

The general Common Law regime of the legal framework under which a foreign judgment, being civil or commercial (but not insolvency) judgments from all countries to which EU Regulation 1215/2012, EC Regulation 44/2001 or the Lugano Convention do not apply, would be recognised and enforced in Ireland is set out below.

Recognition and enforcement of a foreign judgment is pursued by way of commencing fresh proceedings by way of an originating High Court summons. Any fresh proceedings commenced are required to be issued by the Central Office of the High Court and served on the defendant/judgment debtor. For non-EU and non-Lugano Convention judgments, leave of the High Court must first be obtained to issue and serve the proceedings out of the jurisdiction. Order 11, Rule 1(q) of the Rules of the Superior Courts identifies that such leave may be granted in cases brought to enforce any foreign judgment.

As addressed below, since recognition and enforcement of foreign judgments is permissible only in respect of money judgments, a party seeking recognition and enforcement of a foreign money judgment may proceed by way of summary summons (which in domestic procedure is, *inter alia*, reserved for claims for a debt or liquidated sums).

**2.2 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?**

The relevant prerequisites to be met under Irish common law in order for a court to recognise and enforce a foreign judgment are:

(a) the foreign judgment must be for a definite sum and therefore only money judgments may be enforced. Moreover, Irish courts will not enforce foreign revenue, penal or other public laws, whether directly or through the recognition of a foreign judgment;

(b) the foreign judgment must be final and conclusive, which means that it must be final and unalterable by the court that pronounced it. Even if an appeal is pending, the judgment may still be considered final and conclusive unless the appeal has the effect of staying the judgment; and

(c) the judgment against the defendant must be given by a court of competent jurisdiction. This means that the foreign court must have had 'jurisdiction' under Irish conflict of law rules to deliver the final and conclusive judgment in respect of which recognition and enforcement is sought. Submission to the jurisdiction of the foreign court by the defendant will usually arise by virtue of a prior agreement to that effect or by participation in the foreign proceedings, or through presence in the jurisdiction at the time of the proceedings. Assertion of jurisdiction by a foreign court on the bases of nationality or allegiance of the defendant, the domicile of the defendant, reciprocity, the cause of action accruing in the foreign country or the possession of property by the defendant in the foreign country may not of themselves be sufficient bases for the Irish courts to accept that the foreign courts had jurisdiction.

For recognition and enforcement of foreign judgments, a verified/certified/sealed copy of the foreign judgment is required. If the foreign judgment is not in an official language of the State (i.e. English or Irish), it will need to be translated into either Irish or (more usually) English. If the foreign judgment has been obtained in default, proof of service of the judgment on the defendant/judgment debtor will also be required.

**2.3 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?**

Recognition is the process of giving the same effect or status to the judgment in the country where enforcement is sought as it has in the state where the judgment was given. Under Irish law, enforcement is typically understood as being made the subject of a process of execution. As a precursor to that, however, the judgment will need to be recognised, such that recognition of a judgment is, save in very limited circumstances, a precondition to enforcement.

Since only foreign money judgments may be recognised and enforced in Ireland, it would be extremely unusual for recognition to be sought on its own as enforcement (execution) is typically the objective in pursuing the proceedings.

**2.4 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.**

Where an application for leave to issue and serve the proceedings out of the jurisdiction is required to be made to the High Court, this will usually be done on an *ex parte* basis, grounded upon an affidavit. That affidavit will generally recite the history of the matter and will exhibit the documents referred to above at question 2.2. It will also usually aver to the fact that the judgment involved is a money judgment, is final and conclusive and was delivered by a court of competent jurisdiction and is enforceable in that jurisdiction.

Once the (summary) summons has issued and been served, the next step for the plaintiff is to issue a motion seeking an order for recognition/enforcement. That motion is also grounded on affidavit and it would also usually exhibit the documents referred to above and make the same averments as would be made when seeking leave to issue and serve the proceedings out of the jurisdiction. If the defendant/judgment debtor has not entered an appearance to the fresh Irish proceedings, the plaintiff will need to put evidence of service of the originating summons and the motion before the court by way of affidavit.

**2.5 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?**

Recognition/enforcement of a foreign judgment can be challenged on a number of grounds. The High Court has a discretion to refuse recognition and enforcement of a foreign judgment on the following bases:

(a) fraud in procuring the foreign judgment (irrespective of whether fraud has been raised as a defence in the foreign proceedings or not);

(b) lack of jurisdiction (whether of the foreign court or the Irish court);

(c) it is contrary to Irish public policy;

(d) it is contrary to principles of natural justice (such as the right to be given due notice of the proceedings, an opportunity to be heard by an impartial tribunal, etc.); and

(e) where the judgment is inconsistent with an earlier judgment based on the same cause of action between the same parties (whether analysed on a *res judicata* or estoppel basis – see the responses at questions 2.7 and 2.8 below).

As a general principle, and on the basis of respect and comity between international courts, the approach of the Irish court to proceedings seeking recognition and enforcement is generally positive. Challenges to proceedings seeking recognition and enforcement are rare and, since Irish authority is limited, it is not possible to offer any real view on whether judgments from certain or specific countries are subject to greater scrutiny.

Most challenges would be brought as a defence to the request for recognition and enforcement as part of the substantive case. However, it would be usual that a challenge to the jurisdiction of the Irish court would be raised as a preliminary issue.

**2.6 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?**

The legal framework relevant to the general regime is applicable in all cases save as identified in section 3 below. Accordingly, there is no subject matter-specific legal framework.

**2.7 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?**

There is no specific Irish authority which identifies the approach of the Irish court to recognition and enforcement of a foreign judgment in such circumstances.

However, a conflicting local judgment on the same or similar issue involving the same parties could (based on persuasive English authority) be a basis on which recognition and enforcement might be refused, depending on which judgment has priority. In determining priority, it would appear from other persuasive Common Law authority that the judgment to be given priority is to be determined by reference to that which was first rendered. Accordingly, a conflicting local judgment should only be effective in precluding recognition and enforcement of a foreign judgment where the local judgment was first rendered. It follows, therefore, that the existence of pending local proceedings should have no effect on the recognition and enforcement of a foreign judgment which, on the basis of the 'first in time' approach, has priority.

**2.8 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?**

There is no specific authority which identifies the approach of the Irish court to recognition and enforcement of a foreign judgment where there is a conflicting local law or prior judgment on the same or similar issue, but between different parties. However, as a general principle, the Irish court has no power to revisit or reconsider a judgment pronounced by a court which was competent to exercise jurisdiction over the parties. That is a matter that should be determined locally.

There is authority from other common law jurisdictions (which would be persuasive before an Irish court) that foreign judgments premised on legal principles which are contrary to those applicable

in the jurisdiction where recognition and enforcement is sought are still capable of being recognised and enforced.

A prior judgment on the same or similar issue involving different parties should not preclude an Irish court from recognising and enforcing a foreign judgment. The fact that different parties are involved means that the criteria for (i) *res judicata*, and (ii) cause of action and issue estoppel which might otherwise be a basis for refusing recognition and enforcement are not capable of being met.

**2.9 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?**

Although there is no specific authority which identifies the Irish court's approach to recognition and enforcement of a judgment which purports to apply Irish law, as a general principle, the Irish court is not entitled to investigate the propriety of proceedings before the foreign court and, if a party is dissatisfied with the outcome of those proceedings, its recourse is by way of appellate proceedings in the forum of the judgment. Arising from that same general principle, the Irish court has no power to revisit or reconsider a judgment pronounced by a court which was competent to exercise jurisdiction over the parties. Moreover, there is old English authority (which is persuasive before the Irish courts) to the effect that an alleged mistake as to English law as applied by the foreign forum does not excuse a defendant from performing the obligations imposed upon it by the judgment. Accordingly, there should be no difference in the approach of the Irish court to recognition and enforcement of a foreign judgment that purports to apply Irish law such that it may not be impeached as to its merits.

**2.10 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.**

Ireland does not have a federal or state court system with different regimes, rules and procedures. Rather, the rules and procedures applicable in Ireland to the recognition and enforcement of foreign judgments are uniform.

**2.11 What is the relevant limitation period to recognise and enforce a foreign judgment?**

On the basis that the obligation to pay the original foreign judgment is treated as being analogous to a breach of contract claim, the limitation period for actions based on a foreign judgment may not be brought after the expiry of six years from the date on which the foreign judgment became enforceable in the jurisdiction where rendered.

## 3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

**3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?**

EU Regulation 1215/2012 came into effect on 10 January 2015 and it applies to proceedings commenced on or after 10 January 2015, and to judgments given on or after that date. It replaces EC Regulation 44/2001 which continues to apply to earlier proceedings and judgments. Both EU Regulation 1215/2015 and EC Regulation 44/2001 apply to questions of jurisdiction and the recognition and enforcement of judgments in civil and commercial disputes, although certain matters remain outside the scope of the legislation, such as revenue, customs and administrative matters, as well as certain disputes relating to bankruptcy and insolvency, family law, social security, arbitration and succession.

Under EU Regulation 1215/2012, no declaration of enforceability is required for the enforcement of an EU Member State judgment to which it applies. In order to pursue enforcement, an applicant will need a copy of the judgment which satisfies the conditions necessary to establish its authenticity and a certificate issued pursuant to Article 53, certifying the judgment is enforceable, containing an extract of the judgment and information about the costs of the proceedings and the calculation of interest. A translation of the certificate may be required by the competent enforcement authority in the Member State where enforcement is to be pursued, but such authority may require translation of a judgment only if it cannot proceed without it.

For the enforcement of an EU Member State judgment to which EC Regulation 44/2001 applies, a declaration of enforceability is required for the enforcement of such judgments, in respect of which an application must be made to the High Court (known as the exequatur procedure). To pursue an application for enforcement of such a judgment, or a judgment to which the Lugano Convention applies, an original, certified or otherwise authenticated written decision or order (which may need to be translated into Irish or, more usually, English) which is final and conclusive with regard to the subject matter of the dispute is required. Finality in that context means final by reference to the court which pronounced it. It does not matter that it may be subject to an appeal, albeit that recognition and enforcement proceedings may be stayed by the High Court in the event that an appeal is lodged.

For enforcement of foreign arbitral awards, the award must be in writing and be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of the tribunal will suffice, so long as the reason for any omitted signature is set out. The award should also state its date and the place of arbitration.

EC Regulation 805/2004 applies in civil and commercial matters to judgments, court settlements and authentic instruments in uncontested claims for payment of a specific sum of money. The judgment creditor is only required to present the competent enforcement authorities of the Member State of enforcement with: (a) a copy of the judgment; (b) a copy of the European Enforcement order certificate; and (c) where necessary, a certified translation into a relevant official language.

**3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?**

In practical terms, those regimes do not distinguish between recognition and enforcement by reference to the formal requirements to be satisfied.

However, since (i) judgments issued by EU or Lugano Convention courts, or (ii) foreign arbitral awards rendered in countries signatories to the New York Convention both may involve rulings/reliefs which are not limited to money judgments, e.g. declaratory relief, there are more likely to be instances where recognition is pursued separately without the need to seek enforcement (i.e. execution).

**3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.**

For judgments issued by the courts of EU Member States on or before 10 January 2015, Regulation 1215/2012 provides that they shall be enforceable without any declaration of enforceability being required. Such a judgment can now be enforced in the Member State addressed as if it were a judgment given by the courts of that Member State.

For judgments issued by Lugano Convention courts and for judgments from EU Member States in proceedings issued before 10 January 2015 (which are therefore subject to EC Regulation 44/2001), a declaration of enforceability must be obtained. The relevant requirements to make such an application are detailed in Order 42A of the Rules of the Superior Courts. Such applications are made *ex parte* to the Master of the High Court grounded on affidavit. Formally, the affidavit should exhibit:

(i) the judgment which is sought to be enforced or a certified or otherwise duly authenticated copy thereof;

(ii) if given in default, the original or certified copy of a document which establishes that the party in default was served with the document instituting the proceedings (or equivalent documents) in sufficient time to enable him to arrange his defence; and

(iii) documents which establish that, according to the law of the state in which it has been given, the judgment is enforceable and has been served.

If necessary, translations of those documents in Irish or (more usually) English should also be exhibited.

The affidavit should also identify whether the judgment provides for payment of a sum of money, whether interest is recoverable (and if so the basis on which it accrues), address details for the parties, the grounds on which the right to enforce the judgment vests in the party making the application and, as necessary, a statement that the judgment has not been (fully) satisfied.

For foreign arbitral awards to be recognised and enforced under the New York Convention, the applicant shall furnish (i) the duly authenticated original award or a duly certified copy thereof, and (ii) the original arbitration agreement pursuant to which the arbitration was conducted or a duly certified copy thereof. If those documents are not in an official language (i.e. Irish or English), the applicant shall produce the necessary translations, which translations should be certified by an official or sworn translator or by a diplomatic or consular officer.

For foreign arbitral awards to be recognised and enforced under the New York Convention, Order 56 of the Rules of the Superior Courts dictates the procedure. An application for recognition and enforcement of a foreign arbitral award is commenced by way of originating notice of motion which is to be returnable before the President of the High Court or the judge nominated as the judge to hear all arbitration-related matters. The originating notice of motion is grounded on affidavit which should set out the basis on which the court has jurisdiction to grant the relief sought and should exhibit the arbitral award and arbitration agreement (and translations thereof), as referenced at question 3.1 above. If the respondent wishes to challenge the application for recognition and enforcement of the award, they may put in a replying affidavit and the court may, if it deems it appropriate, make directions for the conduct of the proceedings prior to determining the application (which may involve further affidavits). The application will typically be determined at a hearing on the basis of the affidavit evidence exchanged with the benefit of oral and, possibly, written legal submissions.

For EC Regulation 805/2004, if the underlying money claim is not contested by a debtor – such as where he has agreed to it or raised no objection – the creditor may, in addition to obtaining judgment from the relevant EU Court, request that the judgment obtained be certified as a European Enforcement Order in the state of origin. Subject to meeting specified minimum procedural standards set out in Chapter III of the Regulation, a certificate will issue from the Member State of origin which provides that the judgment shall be recognised and enforced under the same conditions as a judgment handed down in the Member State of enforcement. To pursue such enforcement, the creditor simply submits the judgment, the European Enforcement Order certificate and any necessary translation to the competent enforcement authority in the Member State addressed.

**3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/ enforcement of a judgment be challenged under the special regime? When can such a challenge be made?**

For judgments from EU Member States, Regulation 1215/2015 provides that such judgments shall be recognised without any special procedure being required and that they shall be enforceable without any declaration of enforceability being required. However, Article 45 provides that recognition may be refused on a number of grounds (which are the same as apply under the Lugano Convention and EC Regulation 44/2001 for EU judgments in proceedings issued before 10 January 2015 (Articles 34 and 35 of both instruments – see below)) and the applicant for refusal may also seek relief in relation to the enforcement being sought.

For judgments subject to EC Regulation 44/2001 or the Lugano Convention, once the formal requirements as identified at question 3.1 above have been met, subject to specific exceptions in those instruments, the Master of the High Court has no jurisdiction to refuse recognition of the judgment. Those exceptions are as follows:

(i) where it is manifestly contrary to public policy in the state addressed;

(ii) where the judgment was given in default, if the defendant was not served with the document that instituted the proceedings or equivalent in sufficient time and in such a way was to enable him to arrange his defence;

(iii) if the judgment is irreconcilable with a judgment given between the same parties in the state addressed;

(iv) if the judgment is irreconcilable with an earlier judgment in another state involving the same cause of action and same parties, so long as the earlier judgment fulfils the criteria for recognition in the state addressed; and

(v) if the judgment conflicts with the jurisdictional principles applicable to claims involving insurance, consumer contracts, contracts of employment or cases where exclusive jurisdiction is mandated.

An appeal of the decision of the Master may be made within one month of the date of the enforcement order and must be on notice. If the enforcement order is refused, the applicant can appeal to the High Court within five weeks from the date of the refusal of the order.

For foreign arbitral awards, once the formal requirements identified at question 3.1 above have been met, and the procedure referenced at question 3.3 above has been followed, the only grounds on which recognition and enforcement might be refused are those set out at Article V of the New York Convention and Article 35 of the UNCITRAL Model Law (which is applicable under Irish law pursuant to the Arbitration Act 2010). Article V of the New York Convention and Article 35 of the UNCITRAL Model Law are essentially identical and both provide that the grounds on which recognition and enforcement of a foreign arbitral award might be refused are as follows:

(a) if a party to the arbitration agreement was under some incapacity, or if the arbitration agreement is not valid under the law applicable to it or under the law of the country where it was made;

(b) where the party against which the award was made was not given proper notice of the appointment of the tribunal or of the arbitral proceedings or was otherwise unable to present their case;

(c) if the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or if it contains decisions on matters beyond the scope of the submission to arbitration;

(d) if the composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

(e) if the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; and

(f) if the court finds that (i) the subject matter of the dispute is not capable of settlement by arbitration under Irish law, or (ii) the recognition or enforcement of the award would be contrary to Irish public policy.

There is, in addition, a preliminary question under Irish law as to whether the Irish courts have jurisdiction over the subject matter of the dispute where the parties have no direct connection with Ireland, in which case it must be established that a "solid practical benefit" arises to the applicant in seeking recognition and enforcement of the foreign arbitral award in Ireland.

Challenges are typically raised in seeking to defend an application by the successful party in the arbitration to seek recognition and enforcement of the award. Since arbitration awards are a creature of contract, under Irish law any application for recognition and enforcement must be brought within six years of the rendering of any such award.

Under Article 21(2) of EC Regulation 805/2004, the judgment or its certification as a European Enforcement Order may not be reviewed as to their substance in the Member State of enforcement. Enforcement only can be refused by the Member State of enforcement if the judgment certified is irreconcilable with an earlier judgment given in another state, provided that:

(a) the earlier judgment involved the same cause of action and was between the same parties;

(b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and

(c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

## 4 Enforcement

### 4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

A judgment creditor, including one with a foreign judgment which has been recognised and enforced, may exercise a number of options to collect a judgment debt including the following:

(a) An Execution Order (or *Order of Fieri Facias*) orders the seizure and sale of goods belonging to the judgment debtor in Ireland by publicly appointed sheriffs. In reality, this is frequently ineffective.

(b) A judgment mortgage may be registered against real property in Ireland owned by the judgment debtor and will then operate as if the judgment debtor had mortgaged the property to the judgment creditor. If payment is not made, the judgment creditor can force the sale of the property by court application and can take the debt owed from the proceeds of the sale.

(c) A Charging Order may be obtained by the judgment creditor over any Irish Government stock, funds, annuities, or any stocks or shares in any public or private company in Ireland owned by the judgment debtor. An application to the Irish Courts may also be made to charge stock of an English-registered company carrying on business in Ireland. Where a charging order is made, the relevant shares/securities "stand charged" with the payment of the judgment debt, until the debt has been repaid. Generally, the charging order will provide that the chargee is entitled "*to all such remedies as he would have been entitled to as if such charge had been made in his favour by the judgment debtor*". A charging order will take effect subject to any prior ranking security in respect of the relevant shares or securities. Once the charging order is made absolute and served on the debtor, the debtor may not transfer or otherwise dispose of the shares.

(d) Garnishee orders may be sought where it appears that the debtor has no assets of his own but there is money due and owing to him from a third party based in Ireland (the "garnishee"). In those circumstances, the judgment creditor may seek to have that debt paid to him instead. The garnishee must be within the jurisdiction, although a garnishee may include a firm, any member of which is resident within the jurisdiction. Such a debt may include a credit balance on the judgment debtor's bank account. A judgment creditor can apply to Court, without notice to any other party, for a conditional order preventing the garnishee from repaying the debt to the judgment debtor, pending a hearing, at which the judgment debtor is entitled to attend to "show cause" why the order should not be made absolute. Once the order is made final (i.e., an absolute garnishee order is granted) and upon service of the garnishee order on the garnishee, the garnishee is obliged to pay the debt owed to the judgment debtor directly to the judgment creditor.

(e) A receiver by way of equitable execution may be appointed over the judgment debtor's Irish property. Equitable execution is a mode of relief granted to the judgment creditor where the ordinary methods of execution are unavailable or unlikely to be effective and all other reasonable available avenues to execute the judgment have been exhausted. Future assets may be attached, in appropriate circumstances, in this manner. In certain cases, a receiver may be appointed by way of equitable execution even before judgment in order to prevent dissipation of assets pending a judgment. Appointment of a receiver by way of equitable execution does not give a judgment creditor any mortgage, lien, or charge over the assets to which he is appointed. If the receiver takes possession of the relevant assets, he does so not for the judgment creditor, but for the court and an application for directions as to how to deal with the property is required to be made, for example, to sell the property and pay the proceeds over to the judgment creditor.

(f) Liquidation of an Irish-registered debtor company can also be effective in securing payment. A judgment creditor can petition the court for the appointment of a liquidator to wind up the judgment debtor company (if Irish) and to realise the assets of the company for the benefit of its creditors. Directors of a liquidated Irish company could, if the liquidator believes it appropriate, be subject to proceedings themselves and could, in exceptional circumstances, be made personally liable for the debts of the debtor company.

(g) A judgment creditor can also seek an order to obtain information from the judgment debtor about its assets. Applications under this procedure, known as discovery in aid of execution, are made on an *ex parte* basis. The Court may order the attendance of the judgment debtor (or officers of a

corporation) for oral examination and/or the provision by the judgment debtor of documentation prior to examination. This is not effective where the judgment debtor is not domiciled or registered in Ireland.

## 5 Other Matters

**5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.**

Whilst there is limited Irish case law relating to the recognition and enforcement of foreign judgments, judgment has been delivered within the last year in a significant Commercial Court case. In *Albaniabeg Ambient Sh.p.k. v. Enel SpA and Enelpower SpA* [2016] IEHC 139, Judge McDermott confirmed that for the Irish courts to exercise jurisdiction over proceedings which seek recognition and enforcement of a foreign judgment, there must be a "*solid practical benefit*" to be obtained from the making of an order to that effect. In order to demonstrate such benefit, a plaintiff/applicant will need to establish that the judgment debtor has, or is likely to have, assets within the jurisdiction against which to enforce the foreign judgment. Accordingly, the decision confirms the existence of a jurisdictional hurdle that a party seeking to recognise and enforce a foreign judgment may be faced with even prior to being allowed to raise any defence of a substantive nature.

**5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?**

Based on the decision in *Enel* (as referenced above and analogous authority dealing with the enforcement of a foreign arbitral award), prior to commencing proceedings seeking recognition and enforcement of a foreign judgment in Ireland, a potential applicant should be satisfied that there is a "solid practical benefit" to bringing those proceedings in Ireland. Although having assets in the jurisdiction is not a prerequisite to successfully obtaining an order for recognition and enforcement of a foreign judgment, as a practical matter the potential applicant should be able to satisfy the Irish court that, even if there are currently no assets in Ireland against which to enforce, making an order for recognition and enforcement is not an exercise in futility. If there is no "solid practical benefit" to a plaintiff/applicant in obtaining an order for recognition and enforcement, the proceedings are likely to be susceptible to a jurisdictional challenge which, depending on the extent of the benefit that can be established, is likely to succeed.

It should also be borne in mind that proceedings seeking recognition and enforcement of foreign judgments or awards, if challenged, can result in significant costs and further delay before a determination is reached. Furthermore, under Irish law, a determination in respect of the recognition and enforcement of a foreign judgment is subject to an automatic right of appeal to the Court of Appeal (and any further appeal can only be brought in limited circumstances). This potentially can add further to the costs of such proceedings and to the time before an ultimate decision on recognition and enforcement is made.

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**Gearóid Carey** is an Associate in the Commercial Litigation and Dispute Resolution Group at Matheson. He advises in relation to general commercial disputes, principally focusing on corporate disputes and other contractual claims, particularly bank-related claims. He has significant experience in relation to the enforcement of domestic, EU and foreign judgments and in relation to the enforcement of arbitral awards. He is admitted as a solicitor in Ireland, Northern Ireland and in England and Wales, having trained and qualified with a leading City of London law firm. Gearóid has worked as a tutor in law at University College, Cork and he also tutors in litigation on the Law Society of Ireland professional practice courses and has worked as a Judicial Assistant at the Court of Appeal, London. He has published numerous articles in legal journals and texts. Gearóid is the Irish correspondent for the International Law Office (ILO) litigation newsletter. He is also a Member of the Chartered Institute of Arbitrators, the Irish Society of Insolvency Practitioners and Dublin Solicitors Bar Association, where he is a member of the Commercial Law Committee.

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