

Enforcement of Foreign Judgments

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This chapter is up to date as of December 2013

Ireland

Europe

Ireland

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1. UNIFORMITY OF LAW AND REGULATIONS

Ireland does not have a federal system.

In Ireland the enforcement of EU judgments is governed by Regulation 44/2001 (the 'Brussels Regulation'). The Jurisdiction of Courts and Enforcement of Judgments Act 1998 implements the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 and the Lugano Convention Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1988. That Act, and those Conventions, are therefore relevant to enforcement of judgments from certain territories of EU Member States to which the Brussels Convention applies but which are outside the EU and to the enforcement of judgments from EFTA states. Enforcement of EU/EFTA judgments is common-place before the Irish courts and is quite straightforward. For the purpose of this assessment, we treat judgments from EU Member States and Contracting States to the Brussels and Lugano Conventions as the same.

Enforcement of judgments from non-EU Member States and non-Contracting States to the Brussels and Lugano Conventions is governed by Common Law principles. The procedure and rules relating to enforcement of judgments of from such jurisdictions tend to be a rarity, as the procedure is laborious and various limitations and restrictions apply.

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Save where the contrary appears, this chapter deals with enforcement of judgments from non-EU Member States and non-Contracting States to the Brussels and Lugano Conventions.

2. JUDGMENTS

2.1. Definition

Judgment may be defined as any decision or sentence of a court in legal proceedings.

For the purposes of enforcement of EU judgments, the Brussels Regulation adopts the following definition, which is quite broad: ‘judgment’ means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court. Similarly broad definitions apply under the Brussels and Lugano Conventions.

2.2. Categories

- (a) Money judgments are enforceable.
- (b) Specific performance is not enforceable at Common Law. However, because of the breadth of the definition of judgment under the Brussels Regulation and the Brussels and Lugano Conventions, orders directing specific performance from relevant States are enforceable.
- (c) Injunctions are not enforceable at Common Law. However, because of the breadth of the definition of judgment under the Brussels Regulation and the Brussels and Lugano Conventions, injunctions from relevant States are enforceable.
- (d) Arbitration awards are enforceable under the Irish Arbitration Act 2010.
- (e) Judgments relating to personal status are not enforceable.
- (f) An award for multiple/punitive damages is enforceable.
- (g) A judgment which is in itself a recognition of a previous foreign judgment is not enforceable.
- (h) (i) Foreign interim orders for relief *pendente lite* are not enforceable.
(ii) Foreign interim orders for maintenance and custody are not enforceable.

(i) At Common Law, judgments against the local State or any of its organs are enforceable provided that the judgment is for a definite sum. It does not need to be for a definite sum if one is dealing with a judgment under the Brussels Regulation or the Brussels or Lugano Conventions.

(j) At Common Law, only judgments for a definite sum of money are enforceable. It does not need to be for a definite sum if one is dealing with a judgment under the Brussels Regulation or the Brussels or Lugano Conventions. Foreign judgments in relation to revenue matters are not enforceable.

2.3. Reciprocity

Reciprocity is not essential in the enforcement of a judgment of a foreign court in Ireland.

3. CURRENCY REGULATIONS AND RESTRICTIONS

(a) Exchange control measures have been abolished in Ireland.

(b) The value of the judgment need not be converted to local currency for a court application to enforce a foreign judgment in Ireland. However, if enforcement options are to be pursued within the jurisdiction, it may be necessary to obtain the Irish currency equivalent.

4. DOCUMENTARY REQUIREMENTS

At Common Law, for the enforcement of judgments from non-EU Member States and non-Contracting States to the Brussels and Lugano Conventions, the following are required:

- (i) Verified/certified/sealed copy of the judgment.
- (ii) Originating Writ or Summons.
- (iii) Grounding Affidavit.
- (iv) Proof of service of the judgment if obtained in default.
- (v) Translation of the judgment.

(a) Specific proof of the company's authority to act is not required although the deponent of an Affidavit would be required to state the capacity in which the Affidavit has been sworn and has been authorized by the company to make the Affidavit for and on its behalf.

(b) The allegations required to be shown in the Affidavit appear in the example in paragraph 23. The Affidavit must exhibit the judgment which is sought to be enforced and a translation of the judgment or any other documents produced which are not in a recognized language of the local court. Where judgment has

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been obtained in default, the Affidavit should evidence that the party in default was served with the document instituting proceedings. The Affidavit should also aver to the fact that the judgment is enforceable in its originating State.

(c) The courts require the best possible evidence. Original or certified copies of documents are required.

For judgments from EU Member States and Contracting States to the Brussels and Lugano Conventions, Order 42A, Rules 4 and 5 of the Rules of the Superior Courts set out the requirements. An application for enforcement under the Brussels Regulation or the Brussels or Lugano Conventions is made by motion ex parte before the Master of the High Court grounded upon an affidavit. For enforcement under the Brussels Regulation, the affidavit must exhibit the judgment which is sought to be enforced or a certified or otherwise duly authenticated copy thereof and the certificate referred to in Article 54 of the Brussels Regulation. For enforcement under the Conventions, the affidavit must exhibit: (i) the judgment which is sought to be enforced or a certified or otherwise duly authenticated copy thereof; (ii) in the case of a judgment given in default, the original or certified copy of a document which establishes that the party in default was served with the document or documents instituting the proceedings or with an equivalent document or documents in sufficient time to enable him or her to arrange for his or her defence; (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; and (iv) where applicable, a document showing that the applicant is in receipt of legal aid in the state in which the judgment was given.

5. CONVENTIONS

The Republic of Ireland has ratified the Hague Convention on Service Abroad and the Hague Convention on Civil Aspects of Abduction of Children.

6. AUTHENTICATION OF DOCUMENTS

The required documents are to be authenticated by the seal of the foreign court or by certification by a duly authorized Court Officer that the document is a true copy.

7. TRANSLATION OF DOCUMENTS

(a) Only documents in English or Irish are recognized without the necessity for translation.

(b) The translation must be certified by a Notary Public or qualified person in the foreign jurisdiction and authenticated by Affidavit. It is preferable to have a Notary Public certify the translation.

8. REOPENING OR REVIEW OF JUDGMENTS

(a, b) The local court will not review the foreign judgment if all formalities have been complied with and if the judgment meets local requirements.

(c) For enforcement at Common Law, an allegation of fraud can be raised in proceedings before the local court even when such an allegation had not been raised before the foreign court.

9. PENDING PROCEEDINGS

(a) There is no Irish law authority on the effect on enforcement actions in Ireland of proceedings instituted by the defendant prior to the granting of judgment. The possibility of such proceedings in an EU Member State or in a Contracting State to the Brussels or Lugano Conventions involving the same cause of action is contrary to the provisions of the Brussels Regulation and the Brussels and Lugano Conventions in any event. For proceedings instituted in other jurisdictions, the Irish Courts would likely be unwilling to proceed with enforcement given the risk of potentially conflicting judgments.

(b) In the event of an appeal pending, the Irish courts may grant a stay on the enforcement proceedings pending determination of the appeal. If by lodging an appeal in the foreign jurisdiction there is a stay, enforcement in Ireland will not be permissible during the stay period.

10. DEFENCES

For enforcement under the Brussels Regulation and the Brussels and Lugano Conventions, once the conditions of Order 42A of the Rules of the Superior Courts are met by the applicant for enforcement, enforcement is authorized by the Master on an ex parte basis. There is no basis for the respondent to raise defences to such an enforcement application, although an appeal against enforcement does lie to the Supreme Court.

For enforcement under Common Law of judgments from other jurisdictions, a respondent may seek to resist enforcement by relying on one of the following defences:

- Fraud.
- Lack of jurisdiction.
- Where the judgment is contrary to Irish public policy or Irish principles of natural justice.
- Where the judgment is inconsistent with an earlier judgment based on the same cause of action.

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11. JURISDICTION

(a) The Irish courts do not automatically accept the foreign court had jurisdiction.

(b) The Irish courts will apply Irish law in determining whether the foreign court had jurisdiction over the defendant. Disputes regarding real estate situate in Ireland fall solely within the jurisdiction of the Irish court.

(c) The Irish courts do not require consent to the foreign jurisdiction. The following will be acknowledged as providing an acceptable jurisdictional basis by the Irish courts:

- (i) where the defendant resides within the jurisdiction of the court of origin;
- (ii) a company is amenable to the jurisdiction of a foreign court if at the time of service of the originating documents it carried on business in that jurisdiction at a definite and more or less permanent place;
- (iii) where the defendant has contracted to grant jurisdiction to a foreign court;
- (iv) where the defendant has submitted to the jurisdiction of a foreign court, i.e., by entering an appearance or where judgment arises on foot of a counterclaim in proceedings before a foreign court.

(d) (i) Where an appearance was entered solely to contest the jurisdiction of the foreign court the defendant is not prevented from subsequently repudiating the jurisdiction of the foreign court in enforcement proceedings before the Irish court.

(ii) However, where the defendant has entered an appearance unqualified by any contest as to the jurisdiction of the foreign court the defendant will be prevented from subsequently repudiating the jurisdiction of the foreign court in enforcement proceedings before the Irish court.

(e) (i) A foreign judgment granted by default may be treated differently from other judgments in so far as the Irish court will require proof of service of the underlying proceedings on the defendant.

(ii) A default judgment will be defined as the defendant's failure to enter an appearance to defend or failure to submit subsequent pleadings.

(f) Irish law normally recognizes clauses which bind a defendant to the jurisdiction of a particular court. However, the Irish courts can review the judgment on the ground that the foreign court proceeding to render judgment pursuant to a clause conferring exclusive jurisdiction on that court which, under Irish jurisdictional rules, it was not entitled to do.

(g) It is not ordinarily necessary for the respondent to be a citizen/resident, to own assets or to carry on business in Ireland for an enforcement application to be submitted.

12. CONTRACTUAL WAIVER

(a) Contractual waiver of service of proceedings would not be recognized.

(b) The Irish courts would be unlikely to enforce a foreign judgment which was granted on the basis of a contractual waiver of procedural requirements.

13. SERVICE REQUIREMENTS

The Irish court will typically accept the method of service approved by the foreign court.

14. CESSION

(a) The local court will recognize cession of the judgment to another foreign or local claimant.

(b) There are no advantages conferred by cession.

15. INTERIM RELIEF

(a) Interim relief is available to an applicant attempting to enforce a foreign judgment in Ireland in the form of a Mareva Injunction which prevents the defendant from reducing his assets below a specified sum, although this gives the applicant no proprietary interest in the frozen assets.

(b) The Irish courts are likely to require an undertaking or other security from the applicant to make good any damages suffered by the respondent arising from the making of the Mareva Injunction in the event the applicant fails to succeed at the trial of the enforcement action.

16. INTEREST

(i) Interest will be allowed on the original judgment in the terms of the judgment.

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(ii) From the date of recognition of the foreign judgment the interest is 8% per annum computed on a simple interest basis.

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

(a) The time period for enforcement of the foreign judgment from when the application is made will depend on the court to which the application is made and the level of resistance offered by the respondent. It can vary between a matter of weeks and many months.

(b) If the judgment is enforced by the local court, it would be enforceable by:

- (i) attachment of property, movable and immovable;
- (ii) by civil imprisonment as a result of failure to comply with an instalment order;
- (iii) bankruptcy/liquidation;
- (iv) generally not by restraint on leaving the country.

(c) In addition to the above remedies an applicant/judgment creditor could also pursue the following enforcement options:

- (i) attachment of debts (Garnishee Order);
- (ii) charge over stocks and shares;
- (iii) appointment of a receiver by way of equitable execution;
- (iv) publication of fact of judgment;
- (v) registration of judgment mortgages over properties owned by the respondent/judgment debtor;
- (vi) lodgement of the judgment with the sheriff, who can seize and sell items owned by the judgment debtor/respondent;
- (vii) discovery in aid of execution where a judgment debtor is cross-examined as to their ability to meet the judgment debt.

(d) In the event of an appeal from a decision granting or refusing to grant enforcement:

- (i) the right to an appeal is automatic;
- (ii) the current appellate structure involving appeal to the Supreme Court involves significant delays and, unless one can obtain priority (which is available in only limited circumstances), one is subject to a delay of approximately three years;
- (iii) if the defendant were to appeal, there is no automatic right to a stay or suspension of execution. Rather, a specific application would have to be made in order to obtain one. In such cases, the defendant would have to show significant prejudice to it of execution proceeding in circumstances where the appeal is successful. In particular, the defendant should show that the prejudice to it outweighs any prejudice

the plaintiff would suffer if the appeal were unsuccessful and execution delayed in the interim.

18. EXPENSES, LEGAL FEES, AND SECURITY FOR COSTS

(a) Court fees are levied by way of stamp duty on court documents. These fees vary depending on the court in which proceedings are commenced, therefore, the fees are as follows:

High Court	Amounts of EUR 38,100 (approximately) and over	Normal court fees to judgment EUR 160 approximately
Circuit Court	Amounts between EUR 6,350 (approximately) and EUR 38,100 (approximately)	Normal court fees to judgment EUR 100 approximately
District Court	Amounts of EUR 6,350 (approximately) or less	Normal court fees to judgment EUR 40

(b) Attorney’s fees are typically calculated on a fixed fee or time based model. If an action for enforcement is undefended and judgment obtained in default, the fees could be as little as EUR 1,000–EUR 1,500. If the matter is more complicated and fully defended at trial the fee could be tens of thousands of EUR.

(c) Conditional fees agreements are permissible, but legal fees cannot be calculated as a specific proportion or percentage of any damages payable to a client, although for pure debt collection matters, legal fee structures can be varied.

(d) For straightforward, uncontested matters, only scale fees are typically recoverable by the applicant, which fees are generally small and barely cover court fees. For more complicated and contested matters, if successful, an applicant can expect to obtain an order in their favour with regard to the party and party costs, to be taxed (assessed by a court official) if not agreed. In practice, this is likely to equate to somewhere between 50% and 80% of the actual costs the applicant has occurred.

(e) If the applicant is from outside an EU Member State or is not from a Contracting State to the Brussels or Lugano Conventions, the Irish courts will typically require the applicant to give security for costs.

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19. BANKRUPTCY/LIQUIDATION

(a) In the event of bankruptcy/liquidation a foreign creditor will enjoy equality of dividend with local creditors of the same class of creditor.

(b) A foreign trustee in bankruptcy must apply to the local court for an order known as an Order in Aid in order to have any powers over the bankrupt's local assets. Currently the local legislation permits this procedure, whereby the officers of the local court aid a foreign court, in relation to bankruptcies emanating from England and Wales, Scotland, Northern Ireland, The Isle of Man, and the Channel Islands only. However the local courts will make an Order in Aid in respect of bankrupts emanating from States where the bankruptcy procedure is similar to that of the local country.

20. LAWYERS (WHO CAN APPEAR?)

All Irish qualified lawyers (solicitors and barristers) can appear before the courts in respect of the usual enforcement procedures.

21. INTERNATIONAL TREATIES

Relevant international treaties to which Ireland is a party are the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 (including the San Sebastian Convention from 1989 which adopted Spain and Portugal as parties to the Brussels Convention) and the Lugano Convention 1988.

22. CROSS-EXAMINATION OF AFFIDAVIT'S DEPONENT

(a) Where enforcement of a judgment is sought at Common Law, a respondent can request that the deponent of an affidavit can be cross-examined. This is done by serving a notice to cross-examine and unless the deponent is produced for cross-examination, his affidavit cannot be used as evidence except by leave of the court. For proceedings commenced by originating notice of motion (for example, enforcement under the Brussels Regulation, or the Brussels or Lugano Conventions), the scope for cross-examination is much more limited. However, the Court can always seek that a deponent be examined about the contents of the affidavit.

(b) The applicant could argue that the respondent has no valid defence and that the cross-examination would serve no purpose.

(c) The court may order that the defendant give security for costs, which may include the travelling expenses of the deponent.

23. REQUIRED AFFIDAVIT

See Annexure A.

24. NEW ACTION INSTEAD OF ENFORCEMENT

(a) A new action may be instituted on the original cause of action as an alternative to enforcement of the judgment of the foreign court. This does not apply in relation to judgments of EU Member States or Contracting States to the Brussels or Lugano Conventions.

(b) Proceedings must be commenced within six years of the cause of action for claims in contract and tort, although shorter limitation periods apply for certain causes of action.

25. PRESCRIPTION

Whilst any fresh proceedings on the same cause must be commenced within six years from the date of cause of action, Irish law provides that twelve years is the limitation period for bringing an action upon a judgment from the date the judgment becomes enforceable.

26. STATES/CANTONS

The law is uniform throughout the jurisdiction of Ireland.

THE HIGH COURT
Record No.
Between:
FOREIGNER LIMITED
Plaintiff
and
LOCAL LIMITED
Defendant
AFFIDAVIT

1. I, . . . aged 18 years and upwards, solicitor of [•] make oath and say as follows:
2. I am a solicitor in the firm of [•]. I say that I am instructed by [•] being lawyers instructed on behalf of the Plaintiff in [•]. I say that I am duly authorized to make this Affidavit on behalf of the Plaintiff and that I make this Affidavit from facts within my own knowledge and from files and records given to me by [•] save where otherwise appears and where so otherwise appears I believe the same to be true.
3. I say that the Plaintiff herein obtained Judgment in the [•] Court of [•] on the [•] day of [•]. I beg to refer to a certified copy of the said Judgment authenticated by the seal of the said Court together with a translation into English of the said Judgment certified by a Notary Public/authenticated by the Affidavit of [•] who is a duly qualified translator in this jurisdiction, upon which marked with the letter A' I have signed my name prior to the swearing hereof.
4. I say and believe that the Plaintiff is a limited liability company having its registered office at [•] and the Defendant is a limited liability company having its registered office at [•].
5. I say and am instructed by [•] that the proceedings issued in the [•] Court of [•] were served on the Defendant by [•] on the [•] of [•]. In this regard I beg to refer to the Affidavit of Service of [•] upon which marked with the letter 'B' I have signed my name prior to the swearing hereof.
6. I say and am instructed by [•] that the Defendant did not object to the jurisdiction of the [•] Court of [•] and that the [•] Court of [•] has jurisdiction in these proceedings.
7. I say and believe and am instructed by [•] that under the law of [•] that the Plaintiff is entitled to claim interest on the Judgment and the date of the said Judgment until payment at a rate of [•] % per annum. I say and believe and am instructed that the Judgment has not been set aside and that the time within which to appeal against the Judgment has now expired and the Judgment is accordingly enforceable.
8. I say and believe that the Plaintiff is entitled to enforce the said Judgment and the said Judgment is still wholly unsatisfied/unsatisfied as to [•], and their is now due and owing from the said Plaintiff to the Defendant thereunder the sum of [•]

9. I say and believe that the Judgment is not one to which the provisions of the Jurisdiction of Courts and Enforcement of Judgments Act, 1998 applies.
10. I say and believe that the above named Plaintiff is desirous of having the said Judgment registered in this Honourable Court and I therefore pray this Honourable Court for an Order permitting the Plaintiff to so register the Judgment.

SWORN before me by [•]

Who is personally known to me/who is identified to me by who is personally known to me/whose identity has been established to me before the taking of this affidavit by the production to me of a relevant document within the meaning of Section 2 of the Statutory Declaration Act 1938 being a and containing a photograph of the deponent.

on this day of

at

in the City/County of

before me a Practising Solicitor/
Commissioner for Oaths

Filed the [•] day of [•] by [•], solicitors on behalf of the Plaintiff.

