

Enforcement of Foreign Judgments

Contributing editor
Patrick Doris



2017

GETTING THE
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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

Ireland has not entered into any bilateral treaty arrangements with regard to the reciprocal recognition and enforcement of foreign judgments.

However, Ireland has entered into a number of multilateral treaties which are relevant to the recognition and enforcement of foreign judgments in Ireland. The law applicable to the enforcement of such judgments depends primarily on the jurisdiction which has issued the foreign judgment, as well as the date and subject matter of the foreign proceedings.

The principal treaty-based scheme relating to recognition and enforcement of judgments to which Ireland is a party is the EU. The Brussels I Regulation (Council Regulation (EC) 44/2001) and more recently the Brussels I Recast Regulation (Council Regulation (EC) 1215/2012) (which have almost entirely supplanted the Brussels Convention of 1968, which applies in addition to a number of territories of EU member states which territories themselves are outside of the EU) (together the 'Brussels Regime') on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provide detailed provisions relating to the recognition and enforcement of EU judgments. The Brussels I Recast Regulation applies to proceedings issued on or after 10 January 2015 and the Brussels I Regulation applies to proceedings commenced before that date, so it is still of relevance.

The objective of the Brussels Regime is to provide an efficient means for enforcement of judgments obtained in the court of one member state in all other member states. The definition of judgment used in the relevant instruments is broad and covers any judgment given by a court or tribunal of a member state, irrespective of what it may be called. However, the Brussels Regime excludes revenue, customs and administrative matters and also does not apply to orders relating to matrimonial relationships, bankruptcy, social security, arbitration or wills and succession. A principal difference between the Brussels I Regulation and the Brussels I Recast Regulation is that under the former an application is required to the local court for recognition and enforcement, whereas under the latter such procedure is abolished and article 39 provides that no declaration of enforceability is required before the relevant judgment is enforceable in another EU member state.

The EU has also made provision for three other procedures aimed at simplifying and speeding up recognition and enforcement in particular cases.

Pursuant to Regulation 805/2004, the European Enforcement Order process was created for cases where the judgment was issued in a specific sum in uncontested proceedings, which allows the issuing court to certify the judgment. This can then be recognised and enforced in a straightforward way in other member states.

Regulation 861/2007 created the Small Claims Procedure, which allows cross-border claims to be brought under a simplified procedure for civil or commercial claims which do not exceed €2,000, excluding interest, expenses and disbursements.

Finally, the European Order for Payment was established pursuant to Regulation 1896/2006 (as amended), providing for standardised forms and procedures for pursuing uncontested money debts without monetary

limit. The Small Claims Procedure and the European Order for Payment allow enforcement in member states without the need for certification or registration in the first instance.

The Lugano Convention on jurisdiction and the recognition of judgments in civil and commercial matters 2007 is also applicable to the enforcement in Ireland of judgments involving the EFTA States of Iceland, Norway and Switzerland. The Lugano Convention is broadly akin to the regime under the Brussels I Regulation.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Ireland does not have a federal system and accordingly there is uniformity in the law and procedure within the jurisdiction with regard to the enforcement of foreign judgments.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The substantive law on recognition and enforcement of judgments in Ireland derives from a number of sources, which we address in turn.

- European Union Treaty Law (and the Brussels I Regulation (44/2001) and Brussels I Recast Regulation (1215/2012) (together the 'Brussels Regime') pertaining to judgments of EU member states;
- the Lugano Convention, which pertains additionally to judgments from the EFTA states of Iceland, Norway and Switzerland (and which is broadly akin to the regime under the Brussels I Regulation);
- the Jurisdiction of Courts and Enforcement of Judgments Act 1988 and the Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012 (which incorporate the Brussels Convention (the predecessor to the Brussels Regime) and Lugano Convention into Irish law); and
- common law enforcement, which relates to recognition and enforcement of judgments where the originating countries are not EU member states or the EFTA states to which the Lugano Convention applies. At common law, such a foreign judgment is not directly enforceable in Ireland, but will be treated as if it creates a contract between the parties and the creditor will need to bring an action in Ireland for a simple contract or debt claim by way of summary proceedings. Such foreign judgment must be for a definite sum, be final and conclusive, and be given by a court of competent jurisdiction, albeit that recognition and enforcement can be challenged on numerous grounds.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Ireland is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Although the Brussels Regime and the Lugano Convention do not themselves provide for limitation periods, judgments to be recognised and enforced thereunder must generally still be enforceable in the state in which given. There is authority from the CJEU (*Apostolides v Orams* (2009) ECR I-03571) to the effect that enforceability of a judgment in the member state of origin constitutes a precondition for its enforcement in another member state.

For enforcement at common law, the relevant foreign judgment is deemed to create a contract debt. The limitation period for contractual claims of six years from the date of the judgment debt applies in Ireland.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

The Brussels Regime and Lugano Convention define 'judgment' very broadly and state that it 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 a decision on the determination of costs or expenses by an officer of the court. This therefore includes non-money judgments and interim orders, including injunctions, which means that recognition and enforcement of a broad range of effects is permissible. The grounds for refusing recognition of the judgment are limited and are prescribed in the relevant instrument (addressed further below).

By contrast, recognition and enforcement under Irish common law is only permissible in respect of money judgments, meaning that the damages or costs awarded must have been assessed and quantified or, at the very least, be susceptible to a simple arithmetical process. The decision must also 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. For enforcement at common law, the judgment must also have been given by a court of competent jurisdiction, which means that it 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. In addition, the Irish court may refuse jurisdiction if there is no solid practical benefit to enforcement such that it would be futile (see question 28). Accordingly, what is capable of enforcement at common law is of far narrower scope. However, the grounds for challenging recognition and enforcement at common law are broader than under the Brussels Regime or Lugano Convention.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

The Irish High Court is the relevant court in which to bring an application for the recognition and enforcement of foreign judgments. However, depending on monetary thresholds, lower civil courts have jurisdiction in respect of the European Enforcement Order and Small Claims Procedures.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Recognition is the process of giving the same effect or status to the judgment in the country where enforcement is sought as in the state where the judgment was given. Under Irish law, enforcement is typically understood as being made subject to the process of execution. As a precursor to that, however, the judgment will need to be recognised such that recognition of the judgment, save in very limited circumstances, is a precondition to enforcement. It is only where enforcement (execution) is not required that recognition alone might be sought, for example, declaratory relief. Since only foreign money judgments may be recognised and enforced at common law 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.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

Irish courts will generally give effect to a validly obtained foreign judgment and will not enquire into errors of fact or law in the original decision.

The Brussels Regime and Lugano Convention include express prohibitions on the review of a judgment from a member state as to its substance. Notwithstanding that, a defendant may object under those instruments on the basis that the original court lacked jurisdiction to hear the matter (and the instruments themselves contain detailed and specific provisions with regard to jurisdiction principles). In addition, recognition may be refused:

- if it would be manifestly contrary to public policy in the member state addressed;
- if the defendant was not served with the proceedings so as to allow him or her properly to arrange his or her defence; or
- if the judgment is inconsistent with existing judgments in Ireland or another member state.

At common law, the Irish High Court has discretion to refuse recognition and enforcement of foreign judgments on the following bases:

- fraud in procuring the foreign judgment (irrespective of whether fraud has been raised as a defence in the foreign proceedings or not);
- lack of jurisdiction (whether of the foreign court or the Irish court);
- it is contrary to Irish public policy;
- it is contrary to principles of natural justice (such as the right to be given due notice of the proceedings and an opportunity to be heard by an impartial tribunal); and
- 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 issue estoppel basis).

The question of recognition and enforcement is somewhat complicated where an appeal has issued, but the general position under each regime is that the courts have discretion to grant a stay of the proceedings pending determination of the appeal.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

The Irish courts have no authority to prevent foreign courts from acting to issue or enforce judgments, but there is English authority (which is persuasive in Ireland) to suggest that they would have jurisdiction to restrain persons subject to their jurisdiction from enforcing in Ireland a judgment obtained in breach of contract or by fraud (see *Ellerman Lines Ltd v Read* [1928] 2 KB 144). However, this has never arisen in any Irish case, not least because recognition and enforcement can be challenged on broadly equivalent grounds under the applicable regimes.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

An overview of the basic requirements for recognition and enforcement is set out under questions 1, 3 and 6. The bases on which recognition and enforcement may be resisted (and which are necessarily relevant to the basic requirements for enforcement) are summarised under question 9 and specific elements are addressed under questions 14–20 below.

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

The Brussels Regime and Lugano Convention are prescriptive as to what may be taken into account for recognition and enforcement of judgments subject to those regimes.

However, at common law, the Irish Courts have discretion on whether to recognise foreign judgments subject to that regime. The public policy considerations that may be applicable are not closed and it is clear from case law that what may be permissible in another jurisdiction is not necessarily consistent with Irish public policy (see, for example, *Sporting Index Ltd. v O'Shea* [2015] IEHC 407). Furthermore, in the consideration of natural justice principles, each case will be determined on its own specific facts.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

The Irish courts will generally not consider the procedural equivalence of the original court's processes when determining proceedings seeking recognition and enforcement of a particular judgment.

The Brussels Regime and Lugano Convention systems are premised on the assumption of a basic minimum standard of adequate process across all member states. While relevant Irish case law is limited, there is a body of persuasive English authority to the effect that under such regimes it is not appropriate for the courts of an enforcing state to carry out a detailed review of whether the processes in the original jurisdiction had involved a fair trial.

For enforcement at common law, there is no formal need to demonstrate that the proceedings before the original court corresponded to due process in Ireland. However, as identified under question 9, the extent to which the judgment is contrary to principles of natural justice can be a ground to resist enforcement and a defendant may seek to assert that the foreign process did not accord with such principles.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The Brussels Regime and Lugano Convention contain detailed provisions with regard to personal jurisdiction which provide for general rules and specific exceptions with regard to where a party may be sued. Where those jurisdiction rules have been complied with, the enforcing court will be bound by the findings of fact in the original judgment.

For common law enforcement, the Irish courts will consider whether the original court had personal jurisdiction consistent with Irish conflict of law rules which require submission to the jurisdiction of the foreign court by the defendant. Typically, under Irish law, this usually be understood as arising by virtue of:

- the defendant's prior agreement to that effect in a contract;
- their presence in the jurisdiction at the time of the proceedings; or
- their participation in the foreign proceedings, whether by filing a voluntary appearance without qualification or making a counterclaim in the matter.

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 basis for the Irish courts to accept that the foreign court had jurisdiction.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

Under the Brussels Regime and Lugano Convention specific provision is made with regard to jurisdiction in respect of the subject matter of certain disputes such as insurance, consumer contracts and employment contracts. There are, in addition, particular categories of dispute in respect of which exclusive jurisdiction is conferred by the relevant instruments (eg, proceedings relating to immovable property). Conversely, those instruments identify categories (or the subject matter) of disputes which fall outside the scope of those instruments. Accordingly, a court in Ireland may need to consider the subject-matter jurisdiction of the original court when determining whether recognition and enforcement can be pursued under those regimes.

At common law, if the original court did not have subject-matter jurisdiction, the decision will be unenforceable. However, such issues are only likely to arise where the subject matter of the dispute impacts on the submission of the defendant to that jurisdiction and will generally be of significance in cases dealing with judgments in rem.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The Brussels Regime and Lugano Convention provide that the judgment is not to be recognised if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange his or her defence. However, irregularity of service is unlikely to provide a basis to resist recognition and enforcement if the defendant has been made aware of the proceedings and has failed to take steps in respect thereof when it was possible to do so.

As identified under question 9, at common law recognition and enforcement may be refused if the judgment involved is contrary to the principles of natural justice and public policy. Accordingly, in reliance on those grounds, a defendant could seek to resist recognition and enforcement before the Irish court on the basis of the absence of proper service or notice of the proceedings, or the failure of an opportunity to arrange for a defence to be raised.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

In essence, whether the original court was a forum non conveniens is not itself a basis under any regime for resisting recognition and enforcement, although some of the factors relevant to a forum non conveniens analysis may be relevant to the question of jurisdiction and/or service or notice of the proceedings.

18 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Fraud itself is not a basis to refuse recognition and enforcement under the Brussels Regime and Lugano Convention, but depending on the nature of the activity involved it could be said to be contrary to public policy, which is a stated basis for refusal of recognition and enforcement. However, an Irish court would be slow to refuse recognition and enforcement on this basis if there were procedures for investigating the alleged fraud in the original jurisdiction and the local court considered those allegations in reaching its conclusion.

As identified under question 9, recognition and enforcement of a judgment procured by fraud may be refused at common law. This is so irrespective of whether the fraud is by the original court or the plaintiff, and irrespective of whether fraud has been raised as a defence in the foreign proceedings (see the persuasive English authority of *Owens Bank Ltd v Bracco* [1992] 2 AC 443). However, an Irish court is likely to give some weight in exercising its discretion over allowing recognition and enforcement in such circumstances on whether or not, and how, allegations of fraud were addressed by the original court.

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

The Irish courts will not allow recognition and enforcement of a foreign judgment where it is contrary to Irish public policy. Such public policy considerations are not closed and it is important to note that what may be permissible in another jurisdiction may not necessarily be consistent with Irish public policy (see for example *Sporting Index Ltd. v O'Shea* [2015] IEHC 407).

The Brussels Regime and Lugano Convention provide that recognition may be refused where it is manifestly contrary to public policy in the member state addressed. Irish case law has identified that ‘manifestly’ is a threshold issue which highlights the exceptional nature of the public policy basis (see *Sporting Index Ltd. v O’Shea* [2015] IEHC 407) and other cases stress how the issue involved must be ‘fundamental’ with regard to the rights of an individual or the public good. Accordingly, the Irish courts will apply a high standard in determining whether or not an alleged breach of public policy warrants the refusal of recognition on this ground under such regimes.

At common law too, a judgment which is contrary to the principles of Irish public policy may be refused by an Irish court. Although there is no direct Irish authority with regard to the standard applicable to the public policy exception in respect of common law recognition and enforcement, it would be anomalous if the same considerations that applied pursuant to the Brussels Regime and Lugano Convention did not also apply. In this regard, it is of note that the most closely analogous case has identified being contrary to public policy as involving ‘some element of illegality’, being ‘injurious to the public good’ and ‘offensive to the ordinary responsible and fully informed member of the public’ (see *Brostrum Tankers AB v Factorias Vulcano SA* [2004] 2 IR 19 addressing the public policy exception to the enforcement of arbitral awards under the New York Convention). Accordingly, in order to successfully invoke the public policy exception to Irish common law enforcement a defendant has a high threshold to reach.

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

The Brussels Regime is designed to avoid the possibility of conflicting judgments (see section 9 of both the Brussels I Regulation and the Brussels I Recast Regulation), as is the Lugano Convention (see also section 9).

At common law, there is no specific authority which identifies the approach of the Irish court to recognition and enforcement of foreign judgments where there is a conflicting judgment involving the same parties. However, based on persuasive English authority, a conflicting judgment on the same or similar issue could be a basis on which recognition and enforcement might be refused, depending on which judgment has priority. In determining priority, it would appear from the 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 judgment should only be effective in precluding recognition and enforcement of (another) foreign judgment where the conflicting judgment was first rendered.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

As a general principle, enforcement is only possible against the interest of a named judgment debtor and principles of agency and alter ego are not relevant. The circumstances where, for a corporate judgment debtor, a judgment creditor would be entitled to look behind the strict legal personality of that corporate entity are very limited and the threshold to be met to obtain such an order is very high.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

The question of whether the parties had an enforceable agreement to use alternative dispute resolution (excluding arbitration) is something for the court where judgment was pronounced to consider upon the application of the defendant/judgment debtor. If such an issue was not raised, or was determined in the negative by the court in which judgment was pronounced, the Irish court should not look behind the judgment and should proceed to recognise and enforce it. There is no Irish authority confirming that agreements to use alternative dispute resolution (excluding arbitration) are enforceable and any persuasive authorities from other common

law jurisdictions would indicate that the circumstances in which such agreements would be enforceable are extremely limited.

23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Since challenges to proceedings seeking recognition and enforcement are rare, and since Irish authority is necessarily limited, it is not possible to offer any definitive view on whether judgments from specific countries are subject to greater scrutiny. Formally, there is no difference, and judgments of all jurisdictions pursuant to the relevant enforcement regime should be treated equally.

This is certainly the case where enforcement is sought of a judgment under the Brussels Regime or the Lugano Convention.

From a practical perspective, enforcement at common law (which, under Irish law, would involve all jurisdictions save those subject to the Brussels Regime and Lugano Convention) is likely to be somewhat more straightforward where the country in which the relevant judgment was pronounced is a common law country, as the legal system and applicable legal principles would be more familiar to the Irish courts. Indeed, substantive and procedural ‘equivalence’ was identified by the Irish High Court in *Drumm* [2010] IEHC 546 as a basis to justify recognition of US bankruptcy proceedings.

However, by virtue of the procedural rules applicable, and the broader nature of what may be enforced, judgments subject to the Brussels Regime and the Lugano Convention are more amenable to straightforward recognition and enforcement in Ireland than judgments from jurisdictions which are subject to enforcement at common law.

24 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

The Irish courts can, when considering recognition and enforcement, make such orders in respect of only part of a judgment if deemed appropriate. Certain elements of a judgment may be contrary to principles of public policy or may otherwise be ineligible under the relevant enforcement rules (eg, they may constitute taxes or penalties). In circumstances where a portion of a judgment is considered unenforceable, the balance may still be recognised and enforced.

25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Proceedings seeking the recognition and enforcement of foreign judgments in Ireland must include a statement of the amount claimed, which is typically done in the currency of the foreign judgment. The proceedings will usually indicate the interest accrued to the date of issue of the proceedings and will specify the basis on which interest continues to accrue (if at all). An award of costs will generally be enforceable if quantified (and the Brussels Regime and Lugano Convention specifically extend the definition of judgment to this). Assuming that the proceedings seeking to recognise and enforce the foreign judgment were successful, the full amount will be calculated in the local currency for the purpose of execution. The court fees and costs of the Irish enforcement proceedings may also be awarded against the defendant.

26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

There is a right of appeal under all regimes. Under the Brussels I Regulation and Lugano Convention, the application for enforcement is made to the Master of the High Court and the party against whom enforcement is sought has one month from service of the order made to appeal to the High Court. Any High Court determination is subject to further appeal to

the Court of Appeal. Under the Brussels I Recast Regulation, the foreign judgment does not need a declaration of enforceability and is automatically recognised, but the defendant may of course seek to challenge any enforcement steps taken in this jurisdiction and any determination of that challenge is capable of appeal.

For common law enforcement, a High Court ruling with regard to the proceedings seeking recognition and enforcement is subject to an automatic right of appeal to the Court of Appeal. The Court of Appeal Rules (which are detailed) will apply to the procedure.

The only basis on which a judgment creditor can seek to preserve assets to facilitate execution in respect of the foreign judgment once recognised and enforceable is to obtain a *Mareva* or freezing injunction. The test for obtaining such an order is high and it will be necessary to demonstrate the intention of the defendant to dissipate assets with the objective of frustrating the judgment creditor.

If a defendant lodges an appeal with the possible objective of delaying matters, the judgment creditor may fear that the costs of dealing with an (unmeritorious) appeal would be irrecoverable. However, it is possible to obtain security for costs against an appellant, which can, if ordered and not paid, result in the appeal being stayed or dismissed. Such orders may be granted by an Irish Court if the appellant is resident outside the jurisdiction (and outside the jurisdictions covered by the Brussels Regime and Lugano Convention) and if there is reason to believe they will be unable to pay the respondent's costs if ordered to do so.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

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:

- An execution order (or order of *feri 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.
- 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.
- 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 or 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.

- 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 (ie, 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.
- An equitable receiver 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.
- 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.
- 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.



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28 Pitfalls**What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?**

Care should be taken to establish which recognition and enforcement regime is applicable to the judgment. Different processes apply depending on whether the judgment to be recognised and enforced is one subject to the Brussels Regime or the Lugano Convention or whether it is from a jurisdiction where the judgment will need to be enforced pursuant to the Common Law. It should be noted that for judgments from EU member states it will be important to establish when the proceedings commenced, as different regimes apply depending on whether the proceedings issued before or after 10 January 2015 (as explained under question 1).

Care should also be taken where one is dealing with a default judgment, as such cases can cause concerns to be raised with regard to whether the original court had jurisdiction, whether the proceedings were properly served and/or whether the defendant was given a proper opportunity to mount a defence. Where the underlying judgment is under appeal complications can also arise.

It should also be borne in mind that the range of what may be enforced pursuant to the Brussels Regime or the Lugano Convention is subject to a definition of 'judgment' which is very broad and covers any judgment given, whatever it may be called, and includes injunctions. By contrast, enforcement at common law is limited to money judgments only.

Furthermore, leave of the Irish court is required to issue and serve proceedings seeking common law recognition and enforcement of judgment, which application is usually made *ex parte*. In such cases, an application can subsequently be made by the defendant to set aside service on the grounds that the Irish court lacks jurisdiction based on the lack of a solid practical benefit to the proceedings in circumstances where there are no, or no likely possibility of there being, assets in the jurisdiction against which to enforce (see *Albaniabeg Ambient ShpK v Enel SpA & Enelpower SpA* [2016] IEHC 139, in which the authors acted for the successful respondents). It should also be noted that such jurisdictional challenges will often be dealt with as a preliminary issue and any ruling made on such issue is itself subject to an automatic right of appeal. This can add to the costs of such enforcement proceedings and can mean further delay until an ultimate decision on recognition and enforcement is obtained.