

Enforcement of
Foreign
Judgments in
Ireland

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ENFORCEMENT OF FOREIGN JUDGMENTS IN IRELAND

Introduction

The enforcement of judgments between the EU member states is regulated by the Brussels I Regulation (44/2001, OJL 12/1, 16 January 2001) (“the Regulation”). On the 22nd December 2000, the European Council agreed the Regulation to replace the Brussels Convention on Jurisdiction and Enforcement of Judgments 1968 (“the Brussels Convention”). The purpose of the Regulation was to bring the law contained in the Brussels Convention into the main body of EC Law. The Regulation was implemented in Ireland by Statutory Instrument 52 of 2002, European Communities (Civil and Commercial Judgments) Regulations 2002, which came into force on the 1st March 2002.

The Brussels Convention applies between the EU member states and Denmark. The Lugano Convention 1988, (“the Lugano Convention”) which created an almost identical system to the Brussels Convention, applies between the EU member states and the members of EFTA, Switzerland, Iceland and Norway. Both the Brussels Convention and the Lugano Convention (“the Conventions”) are implemented into Irish Law by the Jurisdiction of Courts and Enforcement of Judgments Act, 1993.

The Regulation and the Conventions do not apply to judgments originating from non-convention countries such as the United States of America. There is no bilateral treaty or multilateral international convention in force between the United States of America and any other country on a reciprocal recognition and enforcement of judgments.

Where the Regulation and the Conventions are inapplicable it is necessary to rely on a country’s national laws regulating the rules of enforcement and these can be restrictive in nature.

Enforcement of a Judgment originating from an EU member state in Ireland under Council Regulation (EC) No. 44/2001

Articles 32 to 56 of the Regulation deal with enforcement of judgments between EU member states.

The procedure for enforcing a judgment originating from another EU member in Ireland is as follows:-

(a) Application to the Master of the High Court

An application to enforce a judgment originating from another EU member state in Ireland is made ex-parte by Notice of Motion and Grounding Affidavit to the Master of the High Court who determines the application in accordance with the Regulation. The Grounding Affidavit is sworn by the Irish solicitor making the application on behalf of the party who wishes to enforce the judgment.

Article 53 of the Regulation sets out the documents which are required to be exhibited in the Grounding Affidavit and they are as follows:

- ▣ A copy of the judgment which satisfies the conditions necessary to establish its authenticity. In Ireland, it must be the original or a certified or otherwise authenticated copy of the judgment.
- ▣ A Certificate using the standard form in annex 5 of the Regulation setting out:-
 - (i) the member state of origin;
 - (ii) the Court or competent authority issuing the Certificate;
 - (iii) the Court which delivered the judgment or approved the Court settlement;
 - (iv) details of the judgment or the Court settlement to include the date it was given,
 - (v) its reference number,
 - (vi) the parties to the judgment or the Court settlement,
 - (vii) the name of the Plaintiffs, the name of the Defendant, the name of the other parties, if any,
 - (viii) the date of service of the document instituting the proceedings where the judgment was given in default of appearance;

- (ix) the text of the judgment or the Court settlement;
- (x) the names of the parties to whom legal aid has been granted.

The Certificate is provided by the court officials in the member state in which the judgment was given.

The Master of the High Court will declare the judgment enforceable when Article 53 of the Regulation has been complied with. The enforcement order when granted means that the foreign judgment shall have the same force and effect as if it were a judgment of the High Court. (There are a number of methods of enforcing a judgment under Irish law and those are outlined at Appendix 1).

A party seeking an order for enforcement is at liberty to apply to the High Court for provisional or protective measures in accordance with Article 31 of the Regulation. The High Court may grant such measures if the proceedings have been or are to be commenced in a member state and the subject matter of the proceedings is within the scope of the Regulation.

The High Court may refuse to grant the protective measures sought if, in its opinion, the Court does not have jurisdiction in relation to the subject matter of the proceedings.

(b) Appeal against an Order for Enforcement of a Foreign Judgment

Under Article 43 of the Regulation, a Defendant may appeal against the order of the Master of the High Court within one month of the service of the Notice of Enforcement. If the Defendant is domiciled in a member state other than that in which the Notice of Enforcement issued, the time for appealing is two months.

The test for domicile under the Regulation for an individual is where they ordinarily reside and for a company it is where that company ordinarily carries on its business.

Article 47(3) of the Regulation provides that a party is prohibited from taking enforcement measures on foot of the order for enforcement, other than protective measures, until the appeal has been determined.

The Regulation provides under Article 45, that a declaration of enforceability shall only be revoked on the grounds set out in Articles 34 and 35 of the Regulation.

These grounds are as follows:-

- ▣ if the judgment is contrary to public policy
- ▣ where the judgment was given in default of appearance and the defendant was not served with the proceedings in sufficient time or in a manner as to enable him to arrange for his defence.
- ▣ if the judgment is irreconcilable with a judgment already given in the member state in which enforcement is sought.
- ▣ If the judgment is irreconcilable with an earlier judgment in another member state between the same parties.
- ▣ if the judgment conflicts with Section 3 of Chapter II of the Regulation (jurisdiction in matters relating to insurance); Section 4 of Chapter II (jurisdiction over consumer matters); Section 6 of Chapter II (exclusive jurisdiction), or a case provided in Article 72 of the Regulation, which deals with agreements by which member states undertook not to recognise judgments given in certain circumstances.

Under Article 46 of the Convention, the High Court may stay the proceedings if an Appeal has been lodged against the judgment in the member state of origin.

Enforcement of a Judgment arising from an uncontested claim originating from an EU member state in Ireland under Council Regulation (EC) No. 805/2004

Council Regulation EC no. 805/2004 of the 21st April 2004 created a European Enforcement Order for uncontested claims. The Regulation applies to judgments, court settlements or authentic instruments for uncontested claims.

The purpose of the Regulation is to accelerate and simplify access to enforcement in member states other than that in which the judgment was given. This is achieved by the laying down of minimum standards and the free circulation of judgments, court settlements and authentic instruments in all member states, without the necessity of intermediate proceedings in the member state of enforcement prior to recognition and enforcement.

The Regulation applies in civil and commercial matters and it does not, in particular cover revenue, customs, administrative matters or liability of the State. It is applicable in all member states with the exception of Denmark.

Under the Regulation, a judgment which has been certified as a European Enforcement Order in a member state of origin, will for enforcement purpose, be treated as if it had been delivered in the member state in which enforcement is sought.

This procedure can be differentiated from the procedure provided for in Council Regulation EC No 44/2001 of the 22nd December 2000, as outlined in Section 2, in that under Article 5 of the Regulation, a judgment which has been certified as a European Enforcement Order in the member state of origin shall be recognised and enforced in Ireland without any need for a declaration of enforceability being made by the Master of the High Court and therefore there is no possibility of a debtor opposing its recognition and enforcement.

An application for certification as a European Enforcement Order for uncontested claims is optional for creditors, who may instead choose the system of recognition and enforcement under Regulation EC No. 44/2001 or other community instruments.

The European Enforcement Order certificate is issued using the standard form in Annex 1 of the Regulation. An application for the rectification or withdrawal of a European Enforcement Order Certificate can be made to the court of the member state of origin where there is a material error or where it is clearly wrongly granted.

An application for the rectification or withdrawal of a European Enforcement Order certificate is made using the standard form in Annex VI of the Regulation.

No appeal can be made against the issuing of a European Enforcement Order Certificate.

The court proceedings in the member state of origin must meet certain procedural requirements for judgment on an uncontested claim to be certified as a European Enforcement Order. The Regulation lays down minimum standards with regard to the service of documents and to ensure that the rights of the Defence are respected. Only the documents service methods listed in the Regulation are allowed if the judgment is to be certified as a European Enforcement Order.

The enforcement procedure in Ireland is as follows:

The creditor must provide the Judgments Section of the High Court Office with,

- (a) a copy of the judgment,
- (b) a copy of the European Enforcement Order certificate.

Enforcement of a Judgment from a non EU Regulation/ Convention Country in Ireland

To enforce a judgment originating from a non-Convention country in Ireland, it is necessary to rely on the Irish common law rules of enforcement which permit the enforcement of foreign judgments within certain limits.

The procedure for enforcing a judgment in Ireland is by issuing Irish summary proceedings seeking an Irish judgment in the terms of the foreign judgment.

There are a number of prerequisites to be met under Irish common law before the foreign judgment will be deemed to be enforceable in Ireland and these prerequisites are as follows:-

- (a) The judgment must be for a definite sum. This rules out enforcement of non-monetary judgments.
- (b) The judgment must be final and conclusive. This rules out judgments which may be retrospectively altered by the foreign court.
- (c) The judgment must be given by a court of competent jurisdiction. This criteria presents the most problems when seeking to enforce a judgment in Ireland.

The High Court in Ireland may deem a foreign court to be competent in accordance with rules of private international law, which are as follows :-

1. The defendant must have been present in the country in question at the time of the institution of the foreign proceedings (i.e. at the time of service). Where the defendant is a company, it will be viewed as present in a foreign country if it conducts business from an address in that country.
2. The defendant must have submitted to the jurisdiction of the foreign proceedings. Submission to the proceedings could mean that there had been a prior agreement to the jurisdiction of the foreign proceedings or the defendant had participated in the

foreign proceedings except where the defendant appeared only in order to contest the jurisdiction of the foreign court.

The Irish case of *Rainford –v- Newell-Roberts* IR (1962), clearly outlines the shortcomings of the Irish competence criteria. In that case the Plaintiff sought to seek to enforce a judgment in Ireland which had been given in default of the defendant's appearance to proceedings in England, the defendant having moved to Ireland subsequent to the date of the English judgment. The Irish courts ruled that the English judgment could not be enforced in Ireland as the English court was not of competent jurisdiction ie. the defendant had not been present in England when served with proceedings and had therefore not submitted to the English courts.

The above judgment led to the unsatisfactory outcome whereby the Plaintiffs had to throw away the costs of bringing proceedings in England and re-litigate in the Irish jurisdiction.

Judicial reform regarding the limitations of the competence criteria has recently taken place in the Canadian Courts which have adopted an approach to the competence criteria which had previously only been adopted in cases concerning the recognition of foreign divorces. The Canadian Supreme Court held in *Morguard –v- De Savoye* (1990) 76 DLR that a foreign court was one of competent jurisdiction when “ there was a real and substantial connection between the place of hearing and the action.” This is a more flexible test than that under Irish common law and this test may be satisfied where the defendant was neither resident in the country granting judgment nor submitted to its jurisdiction.

A lot could be said for the Irish courts adopting the real and substantial connection test. Recently the Irish Supreme Court, in the case of *W –v- W* IR 1993, altered a long standing rule relating to the recognition of foreign divorces which would indicate its willingness to alter common law rules regarding the competency criteria. This case dealt with whether a wife's foreign divorce was recognisable in Ireland, when the divorce was granted prior to the enactment of the Domicile and Recognition of Foreign Divorces Act 1986 (“ the 1986 Act”) and at the time of the divorce she had a different domicile to that of her husband. Prior to the enactment of the 1986 Act, the common law rule of law in Ireland was that a divorce would be recognised in Ireland if granted in a country where both spouses were domiciled. The Supreme Court found that the common law rule that a foreign divorce could only be recognisable if the domicile of the married woman was the same as that of her husband, was unconstitutional.

An Irish court will also exercise its right to refuse judgment on the on the following basis:-

- (a) if the foreign judgment was obtained by fraud.
- (b) if the judgment violated Irish public policy
- (c) if the judgment is in breach of natural justice
- (d) if it is irreconcilable with an earlier foreign judgment.

Conclusion

The implementation of Brussels I regulation makes the recognition and enforcement of judgments originating from EU member states in Ireland faster as it provides for a uniform certificate to accompany judgments when a party is applying to enforce the judgment in Ireland. The court to which the application is made has no power to entertain grounds for non-enforcement. Its powers are limited to checking that the documents submitted with the application are in order in accordance with the provisions of the Regulation.

In contrast to the provisions of the Regulation, which have streamlined enforcement of foreign judgments between EU member states, the procedures available under Irish common law for enforcement of foreign judgments in Ireland from non-convention countries are very restrictive.

Although there is some evidence of judicial reform in Ireland which would suggest the Irish Courts are free to assess the competency criteria, at the moment the situation remains that if a judgment originates from a non-convention country, the judgment is often unenforceable as a practical matter. When the enforcement of a foreign judgment is not possible as a result of the Irish courts adhering to long-standing common law rules, the plaintiff may be forced to re-litigate the matter de novo in Ireland, and that course of action may present insurmountable practical or legal obstacles such as excessive costs or expiry of the limitation period.

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