

# LEXOLOGY®

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# Litigation: Enforcement of Foreign Judgments in Ireland



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## Contributors

### Ireland



**Matheson**  
Julie Murphy O'Connor  
julie.murphy-oconnor@matheson.com



**Matheson**  
Gearóid Carey  
gearoid.carey@matheson.com



## General framework

### Domestic law

#### Which domestic laws and regulations govern the recognition and enforcement of foreign judgments in your jurisdiction?

##### Brussels Regime

For judgments and proceedings commenced before January 10 2015, the Brussels I Regulation (44/2001) applies. The Brussels I Regulation was implemented into Irish law by the European Communities (Civil and Commercial Judgment) Regulations 2002 (SI 52/2002).

For proceedings commenced after January 10 2015 the enforcement of EU judgments is governed by the Brussels I Recast Regulation (1215/2012) (the Brussels I Recast Regulation and the Brussels I Regulation are known as the 'Brussels Regime'), which was implemented into Irish law by the European Union (Civil and Commercial Judgments) Regulations 2015 (SI 6/2015). The objective of the Brussels I Recast Regulation was to make the recognition and enforcement of EU judgments more straightforward and it has dispensed with the need to bring any application to court in respect of judgments to which it applies.

##### Conventions

The Jurisdiction of Courts and Enforcement of Judgments Act 1998 and the Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012 incorporate the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 (the predecessor of the Brussels Regime), the Lugano Convention on the Enforcement of Judgments in Civil and Commercial Matters 1988 and the Lugano Convention on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters 2007 into Irish law.

In essence, the Lugano Convention is relevant to the enforcement of judgments from European Free Trade Association (EFTA) member states. The Brussels Convention is still relevant to a limited number of territories of EU member states whose territories are outside the European Union. The principles and processes regarding recognition and enforcement under the Brussels Convention are essentially the same as under the Lugano Convention and the Brussels I Regulation.

Order 42A of the Irish Rules of the Superior Courts incorporates the Brussels I Regulation regime and the Lugano Convention (and the Brussels Convention) into the Irish court rules, which detail how the necessary application should be brought before the Irish courts. As indicated above, for judgments to which the Brussels I Recast Regulation applies, no court application is required.

##### Common law

Common law enforcement principles apply for the recognition and enforcement of judgments where the originating countries are neither EU nor EFTA member states. For such enforcement, an application for leave to issue and serve proceedings outside of the jurisdiction must first be brought under Order 11 of the Rules of the Superior Courts.

### International conventions

#### Which international conventions and bilateral treaties relating to the recognition and enforcement of judgments apply in your jurisdiction?

Ireland has not entered into any bilateral treaty arrangements regarding the reciprocal recognition and enforcement of foreign judgments. However, it has entered into several 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 of the foreign proceedings.

The principal treaty-based scheme relates to the recognition and enforcement of judgments to which Ireland is a party is for EU member states. The Brussels I Recast Regulation applies to proceedings issued on or after January 10 2015 and the Brussels I Regulation applies to proceedings commenced before that date, so is therefore still relevant. The Brussels Regime has almost entirely replaced the Brussels Convention, although this instrument still applies to a limited number of territories of EU member states, where the territories themselves are outside the European Union.

The Lugano Convention is applicable to the enforcement in Ireland of judgments involving the EFTA states of Iceland, Norway and Switzerland. In terms of practical steps and relevant legal principles, enforcement of Lugano Convention judgments is broadly akin to the regime under the Brussels I Regulation.

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

Regulation 805/2004 provides for the European Enforcement Order process for cases where the judgment has been issued in a specific sum in uncontested proceedings. This process allows the issuing court to certify the judgment which can then be recognised and enforced easily in other member states.

Regulation 861/2007 provides for 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.

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.

In addition to those listed above, Ireland is a party to subject matter specific conventions which include provisions on recognition and enforcement. These are given force in domestic legislation. For example, the International Carriage of Goods by Road Act 1990 gives effect to the Convention on the Contract for International Carriage of Goods by Road.

#### Competent courts

### Which courts are competent to hear cases on the recognition and enforcement of foreign judgments?

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

#### Distinction between recognition and enforcement

### Is there a legal distinction between the recognition and enforcement of a judgment?

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. However, as a precursor to that the judgment must be recognised such that recognition of the judgment, except in limited circumstances, is a precondition to enforcement. The specific regime applicable determines how recognition is obtained. It is only where enforcement (execution) is not required that recognition alone might be sought (eg, declaratory relief or where it is relied upon as *res judicata* to prevent the parties relitigating the same dispute). Since only foreign money judgments may be recognised and enforced at common law in Ireland, it is rare for recognition to be sought on its own in respect of such foreign judgments, as enforcement (execution) is typically the objective in pursuing the proceedings.

#### Ease of enforcement

### In general, how easy is it to secure recognition and enforcement of foreign judgments in your jurisdiction?

This depends on the applicable regime.

For judgments that fall within the Brussels Regime and the Lugano Convention it is relatively straightforward to secure recognition and enforcement of foreign judgements, provided the judgment is not within the recognised grounds for refusal.

For judgments under common law, the position is not quite as straightforward, as it is the court's discretion whether to recognise a foreign judgment. However, 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, provided the judgment is for a definite sum, is final and conclusive, and has been given by a court of competent jurisdiction. However, there are grounds on which recognition and enforcement of such judgments may be refused.

#### Reform

### Are any reforms to the framework on recognition and enforcement of judgments envisaged or underway?

There are no reforms regarding the framework on recognition and enforcement of judgments envisaged or underway. However, the United Kingdom leaving the European Union will affect how judgments from EU member states are enforced in the courts of the United Kingdom and, equally, how judgments of the courts of England and Wales, Scotland and Northern Ireland, respectively, are enforced in EU member states.

## Conditions for recognition and enforcement

### Enforceable judgments

#### Which types of judgment (eg, monetary judgments, mandatory or prohibitory orders) are enforceable in your jurisdiction and which (if any) are explicitly excluded from recognition and enforcement (eg, default judgments, judgments granting punitive damages)?

##### Brussels Regime and Lugano Convention

The Brussels I Recast Regulation and the Brussels I Regulation (together, the 'Brussels Regime') and the Lugano Convention on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters 2007 (the Lugano Convention) define 'judgment' broadly, as 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-monetary judgments and interim orders – including injunctions – meaning that recognition and enforcement of a broad range of effects is permissible. The grounds for refusing recognition of the judgment are limited and prescribed in the relevant instrument (as outlined in 'Grounds for refusal').

##### Common law

By contrast, recognition and enforcement under Irish common law is permissible only in respect of money judgments, meaning that the damages or costs awarded must have been assessed and quantified, or at 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 which pronounced it. Even if an appeal is pending, the judgment may still be considered final and conclusive unless the appeal stays 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. Further, the Irish court may refuse jurisdiction on the grounds that Ireland is not the appropriate jurisdiction in which to seek enforcement from the perspective of comparative cost and convenience. It may consider whether there is any solid practical benefit to enforcement without which it would be futile (*Albaniabeg Ambient ShpK v Enel SpA* (2016) IEHC 139 and (2018) IECA 46). 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 the Lugano Convention.

#### How are foreign judgments subject to appeal treated?

The question of recognition and enforcement is somewhat complicated where an appeal has issued. In practice, Irish Courts are likely to refrain from recognising or enforcing a foreign judgment while it is subject to appeal in the country of origin.

##### Brussels Regime and Lugano Convention

The general position under the Brussels Regime and the Lugano Convention is that the courts have discretion to grant a stay of the proceedings pending determination of the appeal.

##### Common law

For common law enforcement, the position is the same. The court has discretion to decide whether it should grant recognition and enforcement in such circumstances and, if so, it may place a stay on execution pending the outcome of the appeal.

### Formal requirements

#### What are the formal and documentary requirements for recognition and enforcement of foreign judgments?

##### Brussels I Recast Regulation

Under the Brussels I Recast Regulation, there is no special procedure required for recognition of a judgment. Under Article 36 of the Brussels I Recast Regulation, "a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required". Further, if a judgment is given in a member state and is enforceable in that state, it will be enforceable in other member states without a declaration of enforceability. If another member state wishes to recognise such judgment, it should be enforced under the same conditions as provided for in the member state where the judgment was given. Since no declaration of enforceability is required, when enforcing a judgment a creditor can go straight to the competent enforcement authority in the member state for enforcement.

Under the Brussels I Recast Regulation, in order to enforce a judgment the following is required:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- a standard form certificate issued by the court which granted the judgment; and
- if necessary, a translation of the judgment.

#### Brussels I Regulation and Lugano Convention

Recognition and enforcement under the Brussels I Regulation and the Lugano Convention is provided for under Order 42A of the Rules of the Superior Courts. Under Order 42A an ex parte application grounded on an affidavit is made to the master of the High Court (addressed below). However, once the proofs required by the Brussels I Regulation and the Lugano Convention are met, the master has no discretion but to grant the order sought.

An application for recognition and enforcement under the Brussels I Regulation or the Lugano Convention is made by the applicant on an ex parte application, grounded on an affidavit. The affidavit should state:

- whether the judgment provides for the payment of a sum, or sums;
- whether interest is recoverable on the judgment or part thereof in accordance with the law of the state in which the judgment was given and, if so:
  - o the rate of interest;
  - o the date from which the interest is recoverable; and
  - o the date on which the interest ceases to accrue.
- the address for service of proceedings on the party making the application and the name and usual address for the person against whom the judgment was given;
- the grounds on which the right to enforce the judgment is vested in the party making the application; and
- as the case may require, to state that the judgment has not been satisfied in whole or in part and the amount that remains unsatisfied.

The affidavit should exhibit:

- the judgment sought to be enforced or a certified or authenticated copy;
- if given in default, a certified document establishing that the party in default was served with enough time to prepare a defence;
- documents which establish that the judgment is enforceable and has been served; and
- translations, if necessary.

Once the necessary proofs are in order, the master of the High Court has no discretion but to make the order sought. Once made, notice of the making of the relevant order is to be served with the order against the party to which it is directed. The notice should contain:

- full particulars of the judgment or decision declared enforceable;
- name and address of the party making the application and address for service;
- the protective measures (if any) granted in respect of the property;
- the right of the person against whom the order is made to appeal to the High Court against the order; and
- the period within which any appeal may be brought.

#### Common law

Under common law, in order for a foreign judgment (ie, not one subject to the Brussels Regime or the Lugano Convention) to be enforced in Ireland it must comply with the following prerequisites:

- The judgment must be for a definite sum and therefore only monetary 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;
- The 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
- 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, by participation in the foreign proceedings or through presence in the jurisdiction at the time of the proceedings. The bases of the 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 are not themselves sufficient for the Irish courts to accept that the foreign courts had jurisdiction.

Further, when dealing with a default judgment, such cases can raise concerns regarding whether:

- the original court had jurisdiction;
- the proceedings were properly served; or
- the defendant was given a proper opportunity to mount a defence.

Where the underlying judgment is under appeal, complications can also arise.

For the recognition and enforcement of foreign judgments (ie, not those subject to the Brussels Regime or the Lugano Convention) at common law, an application for leave to issue and serve the proceedings out of the jurisdiction is required to be made to the High Court, usually on an ex parte basis, grounded upon an affidavit. Once the (summary) summons has been issued and served, the plaintiff should issue a motion seeking an order for judgment. As that motion is also grounded on affidavit, the plaintiff will need to put evidence of the originating summons and motion before the court by way of affidavit.

In such cases, an application can subsequently be made by the defendant to set aside service on the grounds that Ireland is not the appropriate jurisdiction in which to seek enforcement from the perspective of comparative cost and convenience (pursuant to Order 11 of the Rules of the Superior Courts). Such jurisdictional challenges are often 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.

The following documents are required to support an application for recognition and enforcement under common law:

- a verified, certified and sealed copy of the judgment;
- an originating writ or summons;
- a grounding affidavit;

o the affidavit must exhibit the judgment and a translation of the judgment or any other documents produced which are not in a recognised language of the local court; and

o where judgment has been obtained in default, the affidavit should evidence that the party in default was served with the documents instituting proceedings and refer to the fact that the judgment is enforceable in its originating state.

- proof of service of the judgment if obtained in default; and
- a translation of the judgment, if necessary.

#### Substantive requirements

### What substantive requirements (if any) apply to the recognition and enforcement of foreign judgments? Are enforcing courts in your jurisdiction permitted to review the foreign judgment on the merits?

#### Brussels Regime and Lugano Convention

The Brussels Regime and the Lugano Convention are prescriptive as to what may be taken into account for recognition and enforcement of judgments subject to those regimes. Requirements which a judgment must satisfy before it can be recognised are noted below (see "What are the formal and documentary requirements for recognition and enforcement of foreign judgments?").

The Brussels Regime and the 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.

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.

#### Common law

At common law the Irish courts have discretion on whether to recognise foreign judgments. 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 (eg, *Sporting Index Ltd v O'Shea* (2015))



IEHC 407). Further, in the consideration of natural justice principles, each case will be determined on its own specific facts.

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. 'Equivalence' in terms of the approach or procedure adopted by the foreign court has been used to justify the recognition of a foreign bankruptcy and liquidations (see Drumm [2010] IEHC 46 and *In re Mount Capital Fund Limited (In Liquidation) & Ors* [2012] IEHC 97, unreported High Court, Laffoy J, 5 March 2012, respectively). The extent to which the judgment is contrary to principles of natural justice can be grounds to resist enforcement and a defendant may assert that the foreign process did not accord with such principles.

#### Limitation period

### What is the limitation period for enforcement of a foreign judgment?

#### Brussels Regime and Lugano Convention

Although the Brussels Regime and the Lugano Convention themselves do not provide for limitation periods, judgments to be recognised and enforced thereunder must generally still be enforceable in the state in which they are given. There is authority from the European Court of Justice (*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.

#### Common law

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

#### Grounds for refusal

### On what grounds can recognition and enforcement be refused?

#### Brussels Regime and Lugano Convention

Recognition or enforcement of a foreign judgment can be refused by the High Court on the following grounds under the Brussels Regime and the Lugano Convention: fraud in procuring the judgment (irrespective of whether fraud has been raised as a defence in the foreign proceedings);

- lack of jurisdiction (of the foreign court or the Irish court);
- it is contrary to Irish public policy;
- it is contrary to the principles of natural justice (eg, the right to be given due notice of the proceedings or 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.

#### Common law

At common law, the recognition and enforcement of foreign judgments (ie, non-European Free Trade Agreement or non-EU judgments) can be refused if any of the following exhaustive list of principles are not present:

- the judgment was for a definite sum, final and conclusive;
- the court where the judgment was rendered had jurisdiction;
- the judgment was not obtained by fraud;
- the procedural rules which apply where the judgment was obtained were followed;
- the judgment was not contrary to public policy (natural and constitutional justice);
- the judgment was not inconsistent with an Irish judgment on the same matter;
- the Irish Court had jurisdiction to enforce the judgment; and
- the application to enforce the judgment was brought within the relevant limitation period.

#### Service of process

### To what extent does the enforcing court review the service of process in the original foreign proceedings?

#### Brussels Regime and Lugano Convention

The Brussels Regime and the 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 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.

#### Common law

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.

### Public policy

## What public policy issues are considered in the court's decision to grant recognition and enforcement? Is there any notable case law in this regard?

#### Brussels Regime and Lugano Convention

The Irish courts will not allow recognition and enforcement of a foreign judgment under the Brussels Regime or the Lugano Convention, or common law where it is contrary to Irish public policy. Such public policy considerations are not closed and, importantly, what may be permissible in another jurisdiction may not necessarily be consistent with Irish public policy (eg, *Sporting Index Ltd*, where UK-based gambling was found to be inconsistent with relevant Irish legislation).

The Brussels Regime and the Lugano Convention provide that recognition may be refused where it manifestly contradicts public policy in the member state addressed. Irish case law has confirmed that 'manifestly' is a threshold issue which highlights the exceptional nature of the public policy basis (see *Sporting Index Ltd*) 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 an alleged breach of public policy warrants the refusal of recognition on this ground under such regimes.

#### Common law

At common law, also, 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 regarding 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 the Lugano Convention did not also apply. In this regard, 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 Vukano 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 invoke the public policy exception to Irish common law enforcement successfully, a respondent has a high threshold to reach.

### Jurisdiction

## What is the extent of the enforcing court's power to review the personal and subject-matter jurisdiction of the foreign court that issued the judgment?

#### Personal

#### Brussels Regime and Lugano Convention

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

#### Common law

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. Under Irish law this will be typically understood as arising by virtue of the defendant's:

- prior agreement to that effect in a contract;
- presence in the jurisdiction at the time of the proceedings; or
- 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 themselves be sufficient for Irish courts to accept that the foreign court had jurisdiction.

#### Subject matter

##### Brussels Regime and Lugano Convention

Under the Brussels Regime and the Lugano Convention, specific provision is made regarding jurisdiction in respect of the subject matter of certain disputes, such as insurance, consumer contracts and employment contracts. Further, there are 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.

##### Common law

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

### Concurrent proceedings and conflicting judgments

## How do the courts in your jurisdiction address applications for recognition and enforcement where there are concurrent proceedings (foreign or domestic) or conflicting judgments involving the same parties/dispute?

##### Brussels Regime and Lugano Convention

The Brussels Regime and Lugano Convention aim to avoid conflicting judgments by providing that any court shall, of its own motion, stay its proceedings in favour of the court first seised. The Brussels I Recast Regulation adds that, where there is an express choice as to jurisdiction, proceedings in other courts must be stayed pending any decision from the courts of the chosen jurisdiction.

A judgment will not be recognisable or enforceable if it is irreconcilable with a judgment given between the same parties in a member state addressed, or with a judgment given in another state (whether an EU member state or elsewhere) between the same parties and same cause of action.

##### Common law

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, recognition and enforcement could be refused on the basis of a conflicting judgment on the same or similar issue, depending on which judgment has priority. It appears from the persuasive common law authority that the judgments are prioritised in accordance to which was first rendered or delivered. Accordingly, a conflicting judgment should be effective only in precluding recognition and enforcement of (another) foreign judgment where the conflicting judgment was first rendered or delivered.

There is no specific Irish authority which identifies the approach of the Irish court to the recognition and enforcement of a foreign judgment where there are concurrent proceedings. The existence of concurrent proceedings should have no effect on the recognition and enforcement of a foreign judgment which has priority on the basis of the 'first in time' approach.

## Opposition

### Defences

## What defences are available to the losing party to a foreign judgment that is sought to be recognised and enforced in your jurisdiction?

##### Brussels I Recast Regulation

Under the Brussels I Recast Regulation judgments are automatically enforceable. Accordingly, a party can only assert that one of the conditions pursuant to which the judgment should not be recognised has been triggered. These are likely to be raised only in the face of any step being pursued in Ireland to execute on foot of the judgment.

##### Brussels I Regulation and Lugano Convention

The enforcement of judgments under the original Brussels I Regulation and the Lugano Convention on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters 2007 (the Lugano Convention) takes place on an ex parte basis in front of the master of the High Court. Once the relevant proofs are met, the master has no discretion to refuse recognition and enforcement of the judgment. However, an appeal against such order (or any refusal to make such an order) could be brought to a High Court judge. Grounds for refusing recognition and enforcement include:

- fraud in procuring the judgment (irrespective of whether fraud has been raised as a defence in the foreign proceedings);
- lack of jurisdiction (of the foreign court or the Irish court);
- it is contrary to Irish public policy;
- it is contrary to the principles of natural justice (eg, the right to be given due notice of the proceedings or 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.

#### Common law

At common law, a judgment debtor could seek to resist the proceedings seeking recognition and enforcement if one or more of the following conditions are not met:

- the judgment was for a definite sum, final and conclusive;
- the court where the judgment was rendered had jurisdiction;
- the judgment was not obtained by fraud;
- the procedural rules which apply where the judgment was obtained were followed;
- the judgment was not contrary to public policy (natural and constitutional justice);
- the judgment was not inconsistent with an Irish judgment on the same matter;
- the Irish Court had jurisdiction to enforce the judgment; and
- the application to enforce the judgment was brought within the relevant limitation period.

Further, as referenced above, a challenge could be brought to the jurisdiction of the Irish court to hear such proceedings on the basis that, in the absence of any assets in the jurisdiction against which to enforce, or any reasonable prospect of such, there is no practical benefit to the proceedings.

### Injunctive relief

#### What injunctive relief is available to defendants (eg, anti-suit injunctions)?

Where a judgment debtor challenges the recognition and enforcement of a judgment it can take steps to prevent the enforcement of the judgment pending the outcome of the challenge.

#### Brussels I Recast Regulation

Where the judgment debtor challenges the recognition of a judgment pursuant to the Brussels I Recast Regulation, it may apply to court to:

- limit the enforcement proceedings to protective measures;
- make enforcement conditional on the provision of security; or
- suspend the enforcement proceedings.

#### Brussels I Regulation and Lugano Convention

Under the Brussels I Regulation and Lugano Convention, the judgment debtor is to be given notice of its entitlement to appeal an order of the master of the High Court permitting recognition and enforcement, and it can bring an appeal to a judge of the High Court. A judgment debtor may also make the same applications as referenced above in respect of the Brussels I Recast Regulation.

#### Common law

For any order for leave to issue and serve the proceedings seeking recognition and enforcement out of the jurisdiction obtained on an ex parte basis, the respondent may look to set aside the order on the basis of jurisdiction or for substantive reasons on the grounds available for challenging recognition and enforcement and seek a stay on enforcement pending the outcome of such challenge.

### Recognition and enforcement procedure

#### Formal procedure

#### What is the formal procedure for seeking recognition and enforcement of a foreign judgment?

#### Brussels I Recast Regulation

Under the Brussels I Recast Regulation, there is no special procedure for recognition. In order to enforce a judgment

the following is required:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- a standard form certificate issued by the court which granted the judgment; and
- if necessary, a translation of the judgment.

#### Brussels I Regulation and Lugano Convention

For judgments that fall under the Brussels I Regulation and the Lugano Convention on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters 2007, it is relatively straightforward to secure recognition and enforcement of foreign judgements, provided that the judgment is not within the recognised grounds for refusal.

An application for recognition and enforcement under the Brussels I Regulation or the Lugano Convention is made by the applicant on an ex parte application, grounded on an affidavit. The affidavit should state:

- whether the judgment provides for the payment of a sum, or sums;
- whether interest is recoverable on the judgment or part thereof in accordance with the law of the state in which the judgment was given and, if so:
  - o the rate of interest;
  - o the date from which the interest is recoverable; and
  - o the date on which the interest ceases to accrue.
- the address for service of proceedings on the party making the application and the name and usual address for the person against whom the judgment was given;
- the grounds on which the right to enforce the judgment is vested in the party making the application; and
- as the case may require, to state that the judgment has not been satisfied in whole or in part and the amount that remains unsatisfied.

The affidavit should exhibit:

- the judgment sought to be enforced or a certified or authenticated copy;
- if given in default, a certified document establishing that the party in default was served with enough time to prepare a defence;
- documents which establish that the judgment is enforceable and has been served; and
- translations, if necessary.

Once the necessary proofs are in order, the master of the High Court has no discretion but to make the order sought. Once made, notice of the making of the relevant order is to be served with the order against the party to which it is directed. The notice should contain:

- full particulars of the judgment or decision declared enforceable;
- name and address of the party making the application and address for service;
- the protective measures (if any) granted in respect of the property;
- the right of the person against whom the order is made to appeal to the High Court against the order; and
- the period within which any appeal may be brought.

#### Common law

For judgments to be enforced at common law (ie, not one subject to the Brussels Regime or the Lugano Convention) it is the court's discretion whether to recognise such a foreign judgment. However, 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, provided the judgment is for a definite sum, is final and conclusive, and has been given by a court of competent jurisdiction (albeit there are other criteria, cited above, by reference to which recognition and enforcement may be challenged).

The following documents are required to support an application for recognition and enforcement under common law:

- a verified, certified and sealed copy of the judgment;
- an originating writ or summons;
- a grounding affidavit;

o the affidavit must exhibit the sought judgment and a translation of the judgment or any other documents produced which are not in a recognised language of the local court; and

o where judgment has been obtained in default, the affidavit should evidence that the party in default was served with the documents instituting proceedings and refer to the fact that the judgment is enforceable in its originating state.

- proof of service of the judgment if obtained in default; and
- a translation of the judgment, if necessary.

## Timeframe

### What is the typical timeframe for the proceedings to grant recognition and enforcement?

#### Brussels I Recast Regulation

Where enforcement does not require any particular steps, any foreign judgment subject to this regime is enforceable without any time being incurred, except to obtain the necessary certificate and, if necessary, translation of the underlying judgment.

#### Brussels I Regulation and Lugano Convention

Once the necessary proofs have been obtained, the drafting of the necessary application papers and making the application should only take a matter of weeks, if not shorter.

#### Common law

Common law enforcement requires the commencement of separate proceedings; these must therefore be drafted, and leave obtained, for their issue and service overseas which can take a number of weeks. Service will then need to be effected and, once an appearance has been entered, a motion will issue for judgment on foot of the fresh Irish proceedings founded on the foreign judgment. How long until that motion is determined will depend on the extent of resistance. Common law enforcement could be concluded within a couple of months, or it could take years, especially if a jurisdictional challenge is raised and an initial determination is appealed. Accordingly, much will depend on the extent to which the judgment debtor defends or resists recognition and enforcement.

## Fees

### What fees apply to applications for recognition and enforcement of foreign judgments?

Court fees are charged by way of a stamp duty on court documents. These fees vary depending on the court in which proceedings are commenced and are as follows:

- High Court – cases valued over €75,000 generally incur court fees to judgment of approximately €500-€1,000;
- Circuit Court – cases of value of between €15,001 and €75,000 generally incur court fees to judgment of approximately €250-€500; and
- District Court – cases up to the value of €15,000 generally incur court fees to judgment of approximately €100.

These court fees are in addition to fees payable for legal advice and assistance.

## Security

### Must the applicant for recognition and enforcement provide security for costs?

There is no automatic requirement to provide security. The usual rules on security apply. If the applicant is from outside an EU member state or is not from a Lugano Convention contracting state, and if there is reason to believe they will be unable to pay the respondent's costs if ordered to do so, the Irish courts may, on application, require the applicant to give security for costs. Security for costs may also be ordered if the applicant is a company within the jurisdiction and there is reason to believe that entity will be unable to pay the respondent's costs if ordered to do so.

## Appeal

### Are decisions on recognition and enforcement subject to appeal?

Brussels I Recast Regulation

Under the Brussels I Recast Regulation judgments are automatically recognised. Any appeal would only arise in the context of a challenge based on one of the grounds to justify refusal of recognition as part of an application to take steps to execute on foot of the judgment.

#### Brussels I Regulation and Lugano Convention

Under the Brussels I Regulation and the Lugano Convention, the application for enforcement is made to the master of the High Court. While the master has limited discretion to refuse the order, his ruling is susceptible to appeal. Outside of that, any challenge to an enforcement step based on one of the grounds to justify refusal of recognition would also be susceptible to appeal.

#### Common law

For common law enforcement, a High Court ruling with regard to the proceedings seeking recognition and enforcement is subject to a right of appeal to the Court of Appeal. The detailed Court of Appeal Rules apply.

If a respondent appeals with the possible objective of delaying matters, the judgment creditor may fear that the costs of dealing with an (unmeritorious) appeal would be irrecoverable and the court may grant security for costs against the respondent (see Security above).

### Other costs

## How does the enforcing court address other costs issues arising in relation to the foreign judgment (eg, calculation of interest, exchange rates)?

Proceedings seeking the recognition and enforcement of foreign judgments in Ireland must include a statement of the amount claimed, typically in the currency of the foreign judgment. The proceedings usually indicate the interest accrued to the date of issue of the proceedings and 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). If the proceedings seeking to recognise and enforce the foreign judgment are successful, the full amount will be calculated in the local currency for the purpose of execution at the point of execution. The court fees and costs of the Irish enforcement proceedings may also be awarded against the defendant.

### Enforcement against third parties

## To what extent can the courts enforce a foreign judgment against third parties?

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 a judgment creditor would be entitled to look behind the strict legal personality of a corporate entity debtor are extremely limited, and there is a high threshold to be met to obtain such an order.

### Partial recognition and enforcement

## Can the courts grant partial recognition and enforcement of foreign judgments?

When considering recognition and enforcement the Irish courts can make such orders in respect of only a partial 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, or may not be properly and definitively quantified). Where a portion of a judgment is considered unenforceable, the balance may still be recognised and enforced.