

Enforcement of Foreign Judgments

Fundamental Principles [Ireland]

2020



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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION
(CIVIL AND COMMERCIAL MATTERS)**

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer:

Yes.

In accordance with EU Law, any judgment made in legal proceedings instituted after 10 January 2015 that is enforceable in a Member State of the European Union shall be automatically enforceable in Ireland, without the need for a declaration of enforceability.

For EU judgments made in respect of proceedings instituted prior to 10 January 2015 however, and judgments made in non-EU Countries, enforcement is still possible by applying to the High Court for recognition in accordance with the laws set out below.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer:

Judgments delivered by EU Member StateStates in proceedings instituted post 10 January 2015 can be enforced in Ireland pursuant to the Brussels I Recast Regulation (1215/2012) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This regulation was implemented into Irish law by the European Union (Civil and Commercial Judgments) Regulations 2015 (SI 6/2015). The purpose of the Brussels I Recast Regulation was to reform the regime created by the earlier Brussels I Regulation; Council Regulation (EC) No. 44/2001, which contained a number of deficiencies in the recognition and enforcement procedure of EU judgments. The Brussels I Regulation continues to apply to judgments made in proceedings instituted prior to 10 January 2015.

In contrast to the earlier Brussels I Regulation, which require that an interested party apply to the High Court to enforce an EU judgment, the Brussels I Recast Regulation does away with this procedure (known as the 'Exequatur' procedure). Article 39 of the 2015 Brussels I Recast Regulation states that "[a] judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member State without any declaration of enforceability being required".

Judgments from member countries of EFTA (i.e. Switzerland, Iceland and Norway) can be enforced in Ireland pursuant to the Lugano Convention 1988, which creates an almost identical system to the Brussels Convention. It was implemented in Ireland by the Jurisdiction of Courts and Enforcement of Judgments Act 1993 and later amended by the 1998 Act and most recently amended by the Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act, 2012.

Council regulation EC No. 805/2004 (“2004 Regulation”) created a European Enforcement Order (‘EEO’) which provides a simplified procedure for cross border recognition of judgments, court settlements and authorised instruments on uncontested claims within the EU (excluding Denmark).

Judgments from foreign jurisdictions not falling within the scope of these legislative provisions are dealt with under the Common Law Rules in relation to the enforcement of judgments. (See *Bussoleno Limited v. Kelly and others* [2012] 1 ILRM 81).

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer:

Order 42A of the Rules of the Superior Courts sets out the procedural rules for the recognition and enforcement of foreign judgments pursuant to the provisions of the Brussels I Recast Regulation set out above.

The old Order 42A of the Rules of the Superior Courts has been preserved insofar as it pertains to the Brussels I Regulation. Order 42A Rule 4 states those proceedings which fall “*within the scope of [Brussels I Regulation] may be commenced, continued and determined as if these Rules had not come into force.*”

Order 42B of the Rules of the Superior Courts sets out the procedural rules applicable to the recognition and enforcement of European Enforcement Orders.

In all other cases, there are no special procedural rules applicable – the relevant common law principles are simply applied in the context of the proceedings before the Irish courts.

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer:

Yes, the Brussels I Regulation and Brussels I Recast Regulation provide for the recognition and enforcement of judgments between EU Member States. These

regulations apply to all civil and commercial matters but do not apply to matrimonial, revenue or insolvency matters.

For judgments of an EU Member State made in proceedings issued after 10 January 2015, the Brussels I Recast Regulation provides that such judgments shall be recognised without any special procedure being required (Article 36), and a judgment which is given in a Member State and enforceable in that Member State shall be enforceable in other Member States without the need for a declaration of enforceability (Article 39). Accordingly, there are no procedural rules for the *enforcement* of an EU judgment made in respect of proceedings instituted after 10 January 2015 in the Rules of the Superior Courts in Ireland.

Instead, to enforce such a judgment from another Member State, a party must simply produce copy of the judgment that satisfies the conditions necessary to establish its authenticity and a certificate in the form set out in Annex 1 of the Brussels I Recast Regulation (Article 42).

For judgments of an EU Member State made in proceedings instituted before 10 January 2015, Article 33 of the Brussels I Regulation provides that a judgment given in one Member State shall be recognised in other Member States without any special procedure being required. Article 39 states that an application for the enforcement of a foreign judgment shall be submitted to the court or competent authority indicated in the Annex to the Regulation, which in the case of Ireland is the High Court. In Ireland, the Competent Authority is the Master of the High Court. The procedural rules governing such applications are contained in Order 42A of the Rules of the Superior Courts. Order 42A Rule 4 provides that all applications must be made on an *ex parte* basis to the Master of the High Court.

Order 42A Rule 12 further provides that if enforcement is authorised by the Master of the High Court, the party against whom the order is being sought may appeal the Order to the High Court, within one month of service. The party who is appealing must do so by way of notice of motion which shall be served on the party who has been granted the enforcement order by the Master.

The 2004 Regulation providing for the European Enforcement Order procedure ('EEO'), sets out a simplified procedure for the recognition and enforcement of such Orders. Article 5 of the 2004 Regulation provides that an order which has been certified as an EEO in the Member State of origin does not require a declaration of enforceability in the Member State where enforcement is sought, and there is no possibility of a debtor opposing its recognition and enforcement. Article 20 states that a judgment certified as an EEO shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement. The EEO certificate is issued using the standard form in Annex 1 of the 2004 Regulation. The creditor must provide the competent enforcement authority, which in the case of Ireland is the Judgments Section of the Central Office of the High Court with a copy of the judgment, a copy of the EEO certificate and, if necessary, a translation of the EEO certificate. An application for the withdrawal or rectification

of an EEO certificate can be made to the court of the Member State of origin by using the form in Annex VI of the 2004 Regulation.

Order 42B of the Rules of the Superior Courts provides that in order to certify a domestic judgment as a European Enforcement Order, an application is made ex parte to the court at hearing or to the Master of the High Court.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer:

There are no rules of priority in Ireland in relation to the hearing of applications for recognition or enforcement of foreign judgments.

Under the Brussels I Recast Regulation, there is no need to obtain a declaration of enforceability. It will take some time to obtain a certificate and translation as detailed below. One of the primary aims of the Brussels I Recast Regulation was to remove the costly and time consuming “exequatur” procedure. However, for judgments governed by the Brussels I Regulation, the timescale will depend on the case load of the Master of the High Court and may take from a number of weeks to a number of months.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer:

Yes.

Under the Brussels I Recast Regulation, judgments made in proceedings instituted after 10 January 2015 in an EU Member State are automatically enforceable. Accordingly, it is a matter for the party against whom the judgment is being enforced to challenge the recognition and enforceability of the judgment.

The relevant provision of the Brussels I Recast Regulation is Article 45, which states that:-

“On the application of any interested party”, the recognition of a judgment shall be refused:

1. If it is manifestly contrary to public policy in the Member State in which recognition is sought;

2. Where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. If the judgment is irreconcilable with a judgment given between the same parties in the Member State in which recognition is sought;
4. If the judgment is irreconcilable with an earlier judgment given in another Member State or in a Third State involving the same cause of action between the same parties (provided the earlier judgment fulfils the necessary conditions for recognition);
5. The judgment conflicts with the jurisdiction in relation to insurance, consumer contracts, contracts of employment, or cases of exclusive jurisdiction.

These reasons for refusal to recognise are applied to the enforcement of a judgment by virtue of Article 46, which states:-

“On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.”

Article 48 of the Brussels I Recast Regulation creates a mandate that national courts decide on an application for refusal of enforcement without delay, and Article 49 creates a right of appeal.

Under the Brussels I Regulation, which applies to judgments of an EU Member State made in proceedings instituted before 10 January 2015, the High Court of Ireland can deny recognition of foreign court judgments based on a list of enumerated grounds set out in Articles 34 and 35 of the Brussels I Regulation. Article 45 of the Brussels I Regulation provides that a court may revoke a declaration of enforcement based on one of the grounds set out in Articles 34 or 35. Similarly, the Lugano Convention provides for the following under Article 34:

Article 34 states that a judgment shall not be recognised:

1. If it is manifestly contrary to public policy. This means contrary to public policy in Ireland, not the Member State in which judgment was first given. This ground can only be invoked in exceptional circumstances.
2. Where the judgment was given in default of appearance and the defendant was not served with the documents which instituted the proceedings or equivalent documents in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for

him to do so. This is a question of fact and not simply of satisfying the time limits of either the country of origin or the country of enforcement.

3. If the judgment is irreconcilable with a judgment between the same parties in the Member State in which recognition is sought, i.e. not if it is the same cause of action but whether the legal consequences of two judgments are mutually exclusive.

4. If it is irreconcilable with an earlier judgment given in another Member State or in a Third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the requirements for recognition in the Member State addressed.

2004 Regulation:

The Irish High Court can refuse to enforce an EEO on the application of the debtor where it falls foul of the list of exclusions contained in Article 21 of the 2004 Regulation, namely that the EEO is irreconcilable with an earlier judgment given in any Member State or a third country provided that:

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

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

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

Common Law Rules:

For the enforcement of a judgment that does not fall within the scope of the Brussels or Lugano Conventions or the EEO Regulations, it is necessary to rely on the Irish common law rules in relation to the enforcement of official foreign judgments. Certain conditions must be satisfied including the following:

- The foreign court must have had jurisdiction under Irish conflicts of law rules.
- The foreign judgment must be final and conclusive
- The judgment would not be in violation of Irish public policy.
- The judgment is not contrary to Irish rules of natural or constitutional justice.
- The judgment was not obtained by fraud or deceit.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer:

Lawyers' fees, court fees and any fees associated with the translation of documents.

Article 56 of the Brussels I Recast Regulation states that no security, bond or deposit shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the state in which enforcement is sought. This is similarly provided for in Article 51 of the Brussels I Regulation.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer:

There are no particular time limits outlined in the regulations. It is commonly understood that the judgment must remain enforceable in the state of origin in order for enforcement to be granted.

In relation to the enforcement of foreign judgments under common law, an action to enforce a judgment must be brought within 12 years from the date the judgment becomes enforceable.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer:

If a foreign judgment is subject to an appeal, the Irish courts may be slow to enforce that judgment during the pendency of the appeal.

Brussels I Recast Regulation

The Irish courts have the option as to whether to suspend the proceedings if the foreign judgment is challenged in the state of origin (Article 38).

Similarly, when a party against whom a judgment is being enforced appeals the enforceability of that judgment, pursuant to Article 46 of the Brussels I Recast Regulation, the court may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State in which it was given or until the time for such an appeal has expired (Article 51).

This is provided for the new Order 42A, Rule 13 of the Rules of the Superior Courts.

Similarly, under the Brussels I Regulation and Lugano Convention, the Irish courts may stay the proceedings if an ordinary appeal has been lodged in respect of the judgment in the Member State of origin.

Common Law:

At common law, a foreign judgment must be final and conclusive between the parties before it will be enforced. This does not mean that it is a decision of a final court from which there is no further appeal. However, where such an appeal is pending, it is likely that the Irish court would grant a stay on execution of the judgment pending the outcome of the appeal. In this regard, if the effect of lodging an appeal in the foreign jurisdiction is to stay the execution of the judgment, it may be that the judgment is not then enforceable in Ireland.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?

Answer:

Brussels I Recast Regulation

Given that a judgment is automatically enforceable under the Brussels I Recast Regulations, the only requirements are those outlined in Article 37 of those Regulations, which require that the party seeking to enforce the judgment provide to the court:

1. A copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. A certificate provided by the Court of Origin (a template is found in Annex I of the Regulations);
3. A translation or transliteration of the contents of the certificate or judgment where necessary.

Brussels I Regulation/Lugano Convention:

The procedural requirements for the recognition of foreign judgments pursuant to the Brussels I Regulation are set out in the old Order 42A of the Rules of the Superior Courts. Order 42A Rule 4 provides that the application to have the foreign judgment enforced is made to the Master of the High Court grounded on an affidavit and must exhibit the following:

- The judgment sought to be enforced or a certified or otherwise authorized copy;
- If the judgment was given in default of appearance by the defendant, the original or certified copy of a document establishing that the defendant was served with the document or documents instituting the proceedings in time for him to arrange for his defence;
- Documents establishing that the judgment is enforceable and has been served in the State in which it was given; and
- Where applicable, evidence that the applicant is in receipt of legal aid in the State in which the judgment was given.

Order 42A Rule 5 lists a number of pieces of information which should be contained in the affidavit:

- Whether the judgment provides for the payment of a sum of money;
- Whether interest is recoverable on such an amount in accordance with the law in which the judgment was given and if so at what rate, the date from which the interest is recoverable and the date on which the interest ceases to accrue;
- An address within the State for service of proceedings on the party making the application and the name and last known address or place of business of the person against whom 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, that at the date of the application the judgment has not been satisfied, or the judgment has not fully been satisfied, and the part or amount in respect of which it remains unsatisfied.

EEOs/2004 Regulations:

Article 5 of the 2004 Regulation states:

'A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.'

Article 20(2) of the 2004 Regulation states:

'The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with

- *(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and*
- *(b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and*
- *(c) where necessary, a translation of the European Enforcement Order certificate or a translation thereof into the official language of the member State of enforcement...'*

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer:

Yes.

Brussels I Regulation/Lugano Convention:

The cost of the ex parte application is €190.00 and the grounding affidavit is €20.00. Such papers are not required for judgments governed by the Brussels I Recast Regulation.

Common Law:

Costs occurring will vary according to the context in which legal proceedings are issued.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer:

Under the Brussels I Recast Regulation, a court application is not required for recognition of judgments made in EU Member States in respect of proceedings issued after 10 January 2015.

Brussels I Regulation /Lugano Convention:

Under the old Order 42A rule 4 of the Rules of the Superior Courts, applications for enforcement of foreign judgments must be made to the Master of the High Court. An Order granting or refusing leave to enforce may be appealed by way of Notice of Motion to the High Court. This is provided for under Order 42A Rules 11 and 15. Order 58 Rule 1 provides that this decision may be appealed to the Supreme Court on a point of law.

For enforcement of an EEO, application must be made through the Central Office of the High Court.

At common law, the application for recognition and enforcement is brought by summary summons in the High Court.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer:

Under the Brussels I Recast Regulation, no declaration of enforceability is required for judgments made in EU Member States in respect of proceedings issued after 10 January 2015. Article 41 of the Regulation (and Article 40 of the Brussels I Regulation) specifies that a judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed.

In Ireland, the application must be made by motion *ex parte* to the Master of the High Court grounded on affidavit, the required contents of which are set out in detail in Order 42A.

Common Law:

The affidavit grounding the summary summons must set out that the judgment sought to be enforced satisfies the procedural requirements pursuant to the common law.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer:

Brussels I Recast Regulation

Given that a judgment is automatically enforceable under the Brussels I Recast Regulations, the only requirements are those outlined in Article 37 of those Regulations, which require that the party seeking to enforce the judgment provide to the court:

1. A copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. A certificate provided by the Court of Origin (a template is found in Annex I of the Regulations);
3. A translation or transliteration of the contents of the certificate or judgment where necessary.

Brussels I Regulation/Lugano Convention:

Article 53 of the Brussels I Regulation stipulates that a party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity. Order 42A of the Rules of the Superior Courts provides that such applications are to be grounded on affidavit. Rule 5 states that the following should be exhibited in any such affidavit:

- A copy of the judgment which satisfies the conditions necessary to establish its authenticity. In Ireland, this must be the original judgment or a certified copy;
- If the judgment has been given in default, the original or certified copy of a document which establishes that the party in default was served with the document/s instituting the proceedings or with equivalent document/s in sufficient time to enable him or her to arrange his or her defence;
- Documents establishing that according to the law of the State in which it was given, the judgment is enforceable and has been served; and
- If the applicant is in receipt of legal aid, this must be evidenced.

Order 42A rule 6 states that the affidavit must state:

- Whether the judgment provides for the payment of money;

- Whether there is interest payable on the judgment and what is the rate of any such interest and the date from which it is recoverable and the date on which it ceases;
- The address within the State for service of proceedings on the party making the application and the name and last known address or place of business of the person against whom judgment was given;
- The grounds for enforcing the judgment; and
- That the judgment has not been satisfied or has only been partially satisfied.

Order 42A rule 7 states that the Master may adjourn the application to allow the applicant an opportunity to produce the documents specified in rules 5 and 6 or may accept equivalent documents or dispense with the production of the documents.

A party seeking enforcement of a foreign judgment made in proceedings instituted prior to 10 January 2015 must also produce a certificate which has been issued in the country of origin. Article 54 of the Brussels I Regulation states that such a certificate must be issued by the court or competent authority of the original Member State in the form detailed in Annex V of the Regulation if such is requested by an interested party. The certificate must state the Member State of origin, the court/authority issuing the certificate, the court which issued the judgment or approved the court settlement, details of the judgment/settlement and its reference number, the parties to the judgment/settlement, the plaintiff and defendant names and the names of any other parties, the date of service of the document instituting the proceedings where the judgment was given in default of appearance, the text of the judgment/settlement and the names of the parties to whom legal aid has been granted.

If the above certificate is not produced, Article 55 of the Brussels I Regulation states that the court or competent authority may specify a time for its production or accept an equivalent document or dispense with the requirement for a certificate where it is considered that there is sufficient information to do so. (These provisions are provided for in Order 42A Rule 7 of the Rules of the Superior Courts.)

The court or competent authority can also require documents to be produced in a translated form.

European Enforcement Orders:

Article 20(2) of the 2004 Regulation states:

'The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a translation of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement...’.

This is provided for in Ireland by the terms of Order 42B, Rule 11.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer:

The phases for enforcing a foreign court judgment under the Brussels I Regulation are:

- Application for a declaration of enforceability to the Master of the High Court.
- Issuance of a declaration of enforceability by the Master of the High Court. Upon this declaration, the judgment now has the same status as a normal High Court judgment.
- Either party has a right of appeal under Order 42A, Rule 12.

Under the Brussels I Recast Regulation, no declaration of enforceability is required for judgments made in proceedings issued after 10 January 2015.

Enforcement proceeds in the normal manner as if the judgment was issued by an Irish court.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer:

Yes.

Brussels I Recast Regulation

Under the Brussels I Recast Regulations, a judgment made by a Member State in proceedings issued after 10 January 2015 that is enforceable within that Member State is *de facto* enforceable in Ireland. However, the person against whom the

judgment is being enforced can appeal to the High Court against the enforcement of that judgment (Article 46).

Pursuant to Order 42A Rule 14, where such a person appeals the enforceability of a judgment, this is done to the High Court by notice of motion grounded on affidavit.

Brussels I Regulation /Lugano Convention:

Under the old 42A Rules 12 – 13 provide a right to appeal against the order of the Master of the High Court within one month of service of the order. All such appeals are to be brought by way of notice of motion which is to be served on the party in whose favour the Master of the High Court granted the order for enforcement. The notice of motion should state the grounds of objection and is generally grounded on affidavit.

Common Law:

It is open to a defendant to oppose an application for summary judgment on the grounds that he has an arguable defence that the judgment ought not be recognised pursuant to the common law principles pertaining to the recognition and enforcement of judgments.

- 2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

Answer:

Brussels I Recast Regulation

Similar to the Brussels I Regulation, the enforceability of a judgment that falls within the Brussels I Recast Regulation can be challenged on the following grounds (Article 45):

1. If it the judgment is manifestly contrary to public policy in the Member State in which recognition is sought;
2. Where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. If the judgment is irreconcilable with a judgment given between the same parties in the Member State in which recognition is sought;
4. If the judgment is irreconcilable with an earlier judgment given in another Member State or in a Third State involving the same cause of action between the same parties (provided the earlier judgment fulfils the necessary conditions for recognition);

5. The judgment conflicts with the jurisdiction in relation to insurance, consumer contracts, contracts of employment, or cases of exclusive jurisdiction.

Due to the fact that there is no requirement to apply for a declaration that a judgment is enforceable, there is no procedural defence available to a person against whom a judgment is being enforced.

Brussels I Regulation /Lugano Convention:

Article 34 states that judgments shall not be recognised if they are contrary to public policy, if given in default of appearance of the defendant and the defendant was not given adequate time to arrange for his defence, if it is irreconcilable with a judgment given between the same parties in Ireland or if it is irreconcilable with a judgment given in another Member State or a third country between the same parties involving the same cause of action.

Article 35 of the Regulation states that a judgment shall not be recognised '*if it conflicts with Sections 3, 4 or 6 of Chapter II [of the Regulation], or in a case provided for in Article 72*', i.e. if the judgment conflicts with jurisdiction in relation to insurance, consumer contracts or cases of exclusive jurisdiction.

The defendant can also oppose enforcement if the procedural requirements as set out in Order 42A have not been complied with.

Common Law:

It is open to a defendant to argue that the judgment does not satisfy any one of the common law preconditions for the recognition or enforcement of foreign judgments as set out above.

F. Appeal and its Consequences in this Procedure

1. **Is it possible to appeal a court decision to recognise and enforce a foreign court decision?**

Answer:

Yes.

Brussels I Recast Regulation

Under the Brussels I Recast Regulation, recognition is automatic. As part of an enforcement application, there may be a challenge based on the grounds to justify refusal of recognition as set out in Article 35.

Brussels I Regulation /Lugano Convention:

Under the old 42A Rules 12 – 14 provide for a right of appeal against the order of the High Court within one month of service of the order. All such appeals are to be brought by way of notice of motion which is to be served on the party in whose favour the Master of the High Court granted the order for enforcement. The notice of motion should state the grounds of objection and is generally grounded on affidavit.

Article 44 of the Brussels I Regulation states that a further appeal can be made only in the form specified in Annex IV which in the case of Ireland is an appeal to the Supreme Court on a point of law (drafted prior to the introduction of the Court of Appeal). Article 45 of the Regulation states that on appeal, (i) a declaration of enforceability will only be revoked on one of the grounds set out in Articles 34 and 35, (ii) that such a decision will be given without delay and (iii) that the foreign judgment cannot be reviewed as to its substance. This is provided for in the old Order 42A Rule 11 of the Rules of the Superior Courts.

2. Can this appeal suspend the enforcement?

Answer:

Brussels I Recast Regulations

Under Article 44 of the Brussels I Recast Regulation, in the event of an application for refusal of recognition or enforcement of a judgment pursuant to subsection 2 of Section 3, the Court in the Member State addressed may, on application of the person against whom the enforcement is sought:

1. Limit the enforcement proceedings to protective measures;
2. Make enforcement conditional on the provision of security as the court shall determine;
3. Suspend, either wholly or in part, the enforcement proceedings.

Similarly, where the enforcement of the judgment is suspended in the Member State of origin, the court shall suspend the enforcement of that judgment in Ireland.

Brussels I Regulation /Lugano Convention:

Article 47(3) of the Regulation (as provided for in the old Order 42A Rule 16 of the Rules of the Superior Courts) provides that the enforcement is suspended for the duration of the time within which an appeal can be made or until any such appeal has been determined.

G. Recovery of judicial costs and expenses

- 1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

Answer:

The court has a discretion in awarding costs in civil proceedings, but the general rule is that costs follow the event, meaning that the successful party will be entitled to an order for costs against the unsuccessful party. This is provided for in Order 99 of the Rules of the Superior Court. The costs which the creditor will incur in appointing a solicitor in Ireland to obtain an Enforcement Order in Ireland will normally be sought by way of Order for Costs by the Irish solicitor from the court. The court has discretion on all questions of costs. Normally the court will order the debtor to pay the costs of the application to the court.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

- 1. What types of assets are subject to enforcement of the court's judgment?**

Answer:

All types of assets, with the exception of perishable goods.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: N/A

Ireland

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