



INTERNATIONAL DISPUTE RESOLUTION SPECIALTY GROUP

REPUBLIC OF IRELAND

This is to answer the Group's questionnaire regarding recognition and enforcement in the Republic of Ireland of foreign judgements and arbitration awards.

Introduction

The Republic of Ireland's legal system shares the majority of the characteristics typical to Common Law legal systems; a hierarchical court structure with right of appeal, the operation of a system of precedent and an adversarial based court hearing. Notwithstanding this, the Irish legal system has certain distinctive features which require brief elaboration in the context of the answers to this questionnaire which follow.

Bunreacht na hEireann (the Irish Constitution) represents the primary law of the State in that all enacted legislation must be consistent with its provisions and not detract from constitutionally guaranteed rights. Legislative amendment of a constitutionally enshrined principle will only follow the prior approval of voters by way of constitutional referendum. Accordingly a constitutionally enshrined principle exists at a supra-legislative level.

A further characteristic, unique to the Irish legal system, has evolved in the area of personal injuries litigation. A statutorily established independent body known as the Personal Injuries Assessment Board seeks to obviate the necessity of an injured party commencing legal proceedings in a situation of admitted liability on the part of the tortfeasor. The Board will, subject to the consent of both parties, issue an assessment of the level of damages the injured party is entitled to recover. Acceptance of the assessment represents a bar to instituting legal proceedings in respect of the injury however, agreeing to have a claim assessed is without prejudice to a claimant's right of access to the courts as both parties remain free to reject the assessment. In the event of such a rejection, a claimant is entitled to commence legal proceedings.

Part I – Enforcement of Foreign Judgments

Enforcement

1. What procedures exist for recognition and enforcement of foreign judgments pursuant to conventions?

The relevant Conventions are

- a) The Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1968 which now operates as between EU Member States and Denmark.
- b) The Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1988 which operates between EU Member States and the EFTA States (Norway, Iceland and Switzerland).
- c) EC Council Regulation 44/2001 which operates between EU Member States inter se with the exception of Denmark for which the Brussels Convention remains in force. The Regulation came into effect on the 1st March 2002

The Brussels and Lugano Conventions were implemented into Irish law under the Jurisdiction of Courts & Enforcement of Judgments Act 1998 (“the 1998 Act”). Council Regulation 44/2001 was adopted under EC (Civil & Commercial Judgments) Regulations 2002 (S.I.52/2002).

Brussels & Lugano Conventions

The procedure in the Republic of Ireland to have a Judgment recognised/enforced pursuant to the Brussels and Lugano Conventions is identical by virtue of Section 7 of the 1998 Act. Application is made to the Master of the High Court. Where an Order is made by the Master, the Judgment will have equivalent effect to a Judgment of the High Court.

Application is made on an ex parte basis and the following papers are necessary: -

- 1.) An Affidavit detailing, inter alia, the nature of the proceedings, whether the said judgment provides for the payment of a sum or sums of money, an address within the State for service of proceedings on the party making the application and the name and

usual or last known address or place of business of the person against whom judgment was given and the grounds on which the right to enforce the judgment is vested in the party making the application.

- 2.) It will be necessary for the Affidavit to exhibit a certified or otherwise duly authenticated copy of the Judgment sought to be enforced. The Affidavit must further exhibit documentation establishing that, according to the law of the relevant State, the Judgment is enforceable and has been served.
- 3.) In the case of a Judgment given in default, the original or certified copy of a document which establishes that the party in default was served with the document or documents instituting the proceedings or with an equivalent document or documents in sufficient time to enable him or her to arrange for his or her defence.

The Master is precluded from examining the foreign judgment as to its substance and can only refuse to recognise and enforce a foreign judgment on the following grounds: -

- a) there is a risk that the Judgment is irreconcilable with a previous Judgment given in a dispute between the same parties in the State in which recognition is sought.
- b) the Judgment is contrary to public policy.
- c) in the case of Judgment in default, that the Defendant had insufficient time within which to defend the proceedings.

The Master's decision may be appealed to the High Court by way of Motion on notice to the other side. In the case where an application for enforcement has been refused, the applicant's appeal must be within five weeks of the perfection of the Order. Where the Master's decision was to enforce the foreign Judgment, the party against whom enforcement was sought may appeal within one month of their being served with the Order (Although this time limit is two months where the party is resident in another Contracting State).

Council Regulation 44/2001

Under this Regulation and its adoption into Irish law, a broadly similar procedure to that established pursuant to the Brussels & Lugano Conventions exists for the recognition of the Judgments of other EU Member States (with the exception of Denmark for which the Brussels Convention remains the applicable law).

In contrast to the proofs required for enforcement of judgments within the remit of the Brussels and Lugano Conventions, under the EC (Civil & Commercial Judgments) Regulations 2002 an applicant is not obliged to produce documents showing that the Judgment is enforceable in the State of origin. In lieu of this proof the applicant submits a certificate obtained from the court which granted the Judgment certifying the Judgment's enforceability.

2. What procedures exist for recognition and enforcement of foreign judgments pursuant to Statute or common law?

For enforcement pursuant to Statute see 1. above.

At common law a foreign judgment which orders payment of a specific sum of money is enforceable. The foreign judgment is treated as being analogous to a debt and is enforced on foot of a summary summons.

3. Are there any practical problems or special time factors that a party seeking to enforce a foreign judgment should bear in mind?

None save as outlined in 1. above.

4. Are there any public policy or other issues which may affect enforceability?

Enforcement of a Judgment may be refused if it can be shown that a Judgment is manifestly contrary to the public policy of the enforcing State. Notwithstanding the broad nature of the term "public policy" it is apparent from the case law of the European Court of Justice that the exception is in fact to be interpreted narrowly (see Case 145/86 *Hoffman -v- Krieg* [1988] E.C.R. 645). Given the narrow parameters of the exception it would seem that only a Judgment undermining a constitutionally enshrined principle will come within the

exception. Accordingly a Judgment conflicting with the fundamental rights¹ contained in the Constitution will be vulnerable to refusal of enforcement on grounds of public policy.

Limitation Issues

5. What are the time limits for bringing civil claims?

The Statute of Limitations Act 1957 (as amended) provides the following limitation periods: -

Tort (other than negligence, nuisance or breach of duty involving personal injury or slander)

6 years

-Personal Injury²

The later of 2 years from the date of the accident or two years from the date of knowledge on the part of the claimant that, inter alia, he/she had suffered a significant injury as a result of an act or omission constituting negligence, nuisance or breach of duty on the party of the alleged wrongdoer.

-Defamation

An action for slander must be brought within 3 years of the date of accrual of the cause of action. Conversely an action for libel may be brought within 6 years from the date of accrual of the cause of action (i.e. publication)

¹ The fundamental rights guaranteed by the Constitution of Ireland are contained in Articles 40-44. Some of the rights contained in these Articles would not be characteristic of the Bills of Rights contained in other jurisdiction's constitutions e.g. the State is bound to protect the institution of marriage against attack and is further bound to vindicate the right to life of an unborn child.

² Although a claimant has two years within which to initiate legal proceedings it should be noted that pursuant to s.8 Civil Liability & Courts Act 2004 failure to serve notice in writing of the nature of the wrong alleged to have been committed on an alleged wrongdoer within 2 months/as soon as practicable thereafter entitles a Court to draw such inferences as to it appear proper and, where the interests of justice so require, to penalise a claimant in

Contract

6 years from when the breach of contract occurs.

Liquidated Debts

The later of 6 years from when a debt has become due or 6 years from the last acknowledgment of the existence of the debt on the part of the debtor.

Recovery of Land

12 years

Confidentiality**6. Are court proceedings confidential or public?**

Article 34 of the Constitution establishes the principle that justice be administered in public. This represents the position save in certain limited cases. In camera proceedings or proceedings heard “otherwise than in public” arise in all family law cases and certain commercial law cases. In the latter instance proceedings will be heard in camera where it could be said that a public hearing could “seriously prejudice a company’s legitimate interests”.

Starting Proceedings**7. How are civil proceedings commenced?**

Civil proceedings are commenced by various initiating documents dictated by the Court in which the proceedings are commenced.

-A **Civil Summons** is the initiating document for District Court proceedings. The District Court has jurisdiction over cases with a monetary value not exceeding €6,349.

relation to his/her costs. Where a claim is in the process of Assessment by the Personal Injuries Assessment Board the 2 year period will cease to run during the period of assessment.

-A **Civil Bill** is the initiating document for Circuit Court proceedings. The Circuit Court has jurisdiction over cases with a monetary value not exceeding €38,092.

-A **Plenary Summons** is the initiating document for High Court proceedings. The High Court has an unlimited monetary jurisdiction.

-A **Personal Injuries Summons** is the initiating document where proceedings are commenced following the Personal Injuries Assessment Board procedure outlined above. The initiating document in this instance is known as a Personal Injuries Summons irrespective of the Court in which the proceedings are taken.

Interim Remedies

8. What interim remedies are available?

Prior to the trial of an action it is possible to seek an interim injunction. This may be applied for on an ex parte basis but will last for a limited period or until further Order can be made. An interlocutory injunction may be sought on notice to the other party and will last until the final hearing of the action.

Inter Partes Costs

9. Does the court have power to order costs or to order security for costs?

Costs

Generally a successful party will recover costs reasonably incurred from the unsuccessful party. Notwithstanding this, it is open to the Court to depart from this general principle if it considers it appropriate (i.e. where a case of Circuit Court value has been taken in the High Court a successful plaintiff will be unlikely to recover the full cost of a High Court action).

Security

The Court may require that a reasonable estimate of the actual costs which it is anticipated will be incurred by a defendant be provided in certain situations:

- in the case of a company pursuant to Section 390 of the Companies Act 1963
- in the case of a personal plaintiff; where the plaintiff is ordinarily resident outside the jurisdiction (excluding a plaintiff who is resident in Northern Ireland) and the defendant can demonstrate a good defence to the proceedings.

Jurisdiction

- 10. If a contract has some connection with your jurisdiction, are there mandatory laws under the local law which would apply to the contract irrespective of the parties' choice of law in the contract?**

Under the Contractual Obligations (Applicable Law) Act 1991 the 1980 Rome Convention on the Law Applicable to Contractual Obligations was adopted into Irish Law. Pursuant to Article 3 a contract shall be governed by the law expressly/implicitly chosen by the parties. This general principle established in Article 3 is however, qualified in a number of circumstances.

A Governing Law Clause in an Otherwise Irish Contractual Situation

Where all elements relevant to a contract are connected with the Republic of Ireland save for a clause dictating that the governing law is that of another State then Article 3(3) will apply. In such a situation, Article 3(3) operates to ensure that rules of law which parties are precluded from contracting out of under the law of the Republic of Ireland will remain in force notwithstanding a governing law clause to the contrary.

The point is illustrated by Section 14(2) of the Sale of Goods Act 1893 (as inserted by the Sale of Goods and Supply of Services Act 1980). Under this section a condition is implied into all contracts for sale of goods that the goods supplied under the contract are of merchantable quality. Section 55 of the Act goes on to provide that in a contract for sale of

goods, a contractual provision attempting to oust s.14(2) will be void. Thus, in a contract between two Irish contracting parties a clause dictating that the law of a State, where no such condition is implied into contracts for sale of goods, is to apply will not operate to circumvent the condition implied by s.14(2) due to its mandatory status in Irish domestic law.

Consumer Contracts

Article 5(2) provides that a consumer will not be deprived of the mandatory rules of the State (such as section 14(2) outlined above) of his habitual residence if one of the following conditions is met: -

- a) the consumer has concluded his portion of the contract with a foreign contracting party in the Republic of Ireland, following an advertisement addressed to the consumer.
- b) if the other contracting party received the consumer's order in the Republic of Ireland.
- c) in a contract for sale of goods; if the consumer places an order in the other contracting party's jurisdiction following a journey arranged by the other contracting party for the purpose of inducing the consumer to buy.

Contracts of Employment

Article 6 dictates that a choice of law made by the parties shall not have the result of depriving an employee of the protection afforded to him by rules of law which are mandatory in the Republic of Ireland. In an employment context, an example of such a mandatory rule can be found in Section 6(2) of the Unfair Dismissals Act 1977 which provides that an employee's dismissal shall be deemed unfair if it results wholly or partly from matters such as the religious/political opinions of an employee, an employee's race or an employee's membership of a trade union.

Public Policy Considerations

Pursuant to Article 16 the application of a rule of law of any State specified by the Convention may be refused if such application is manifestly incompatible with the public policy of the forum. Public policy has been discussed at 4. above.

Part II – Enforcement of Arbitral Awards

Enforcement

11. What procedures exist for enforcement of foreign awards?

The 1958 New York Convention on the Recognition & Enforcement of Foreign Arbitral Awards was adopted into Irish Law under the Arbitration Act 1980 (“the 1980 Act”). Section 8 of the 1980 Act requires any person seeking to enforce an award to which the Convention applies to produce the duly authenticated original award (or a certified copy thereof), the original arbitration agreement (or a certified copy thereof) and a certified translation of either of these documents if they are in a language other than English or Irish.

Conventions

12. Is your country party to the New York Convention, Washington Convention and/or Geneva Convention?

Ireland is a signatory to all three Conventions.

UNCITRAL Model Law

13. Is arbitration law based on the UNCITRAL Model Law?

The UNCITRAL Model Law on International Commercial Arbitration was adopted into Irish Law under the Arbitration (International Commercial) Act 1998 and applies in the

Republic of Ireland to international commercial arbitrations as defined under Article 1(3) of the Model Law.

Arbitrability

14. Are there arbitration awards which will not be enforced due to the subject matter of the dispute?

By virtue of Section 9(3) of the Arbitration Act 1980 enforcement of an arbitral award may be refused if the award is in respect of a matter which is not capable of settlement by arbitration under the law of the Republic of Ireland or if it would be contrary to public policy to enforce the award. The parameters of the public policy exception are outlined at 4. above.

Section 5 of the Arbitration Act 1954 provides that the provisions of the Arbitration Acts will not apply to arbitration agreements on any question relating to the terms or conditions of employment. The rationale for this provision would appear to be that such agreements are more appropriately dealt with by tribunals specifically established to address employment disputes (e.g. the Employment Appeals Tribunal). Although the foregoing provision renders employment arbitration agreements incapable of enforcement under the law of the Republic of Ireland it is possible that a foreign arbitral award concerning such an issue could nonetheless be capable of enforcement owing to the absence of the rationale behind section 5 in the context of a foreign award.

Specific Features

15. Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

See introduction.