How to Obtain Recognition of a Foreign Insolvency Process and How to Enforce Insolvency-Related Judgments (Ireland)

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Practice notes | Law stated as at 01-Jan-2026 | Ireland

A Practice Note providing a guide to the domestic processes and requirements for gaining legal recognition of a foreign insolvency process in Ireland. This Note also details any separate considerations around the enforcement of insolvency-related judgments in Ireland.

Legal Framework for the Recognition of a Foreign Insolvency Process in Ireland

The applicable framework for the recognition of foreign corporate insolvency processes in Ireland depends on a number of factors, including the originating country of the foreign insolvency process, the nature of the insolvency process or proceedings, and the date of commencement of the insolvency process or proceedings. In practice, recognition and enforcement of an insolvency process in Ireland are generally sought at the same time.

The treaties, conventions, and statutes under which it may be possible to seek the recognition and enforcement of a foreign insolvency process in Ireland are:

- The *European Insolvency Regulation ((EU) 2015/848)*, as amended by Regulation (EU) 2021/2260 (EIR Recast). This provides for the automatic recognition of insolvency proceedings in EU member states (except Denmark) and has direct effect in Ireland. Where the EIR Recast applies, it prevails over other legal frameworks in relation to cross-border insolvencies within the EU.

- The Brussels Regime, comprising:
  - the *1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters* (Brussels Convention);
  - the *Brussels Regulation ((EC) 44/2001)*;
  - the *Recast Brussels Regulation ((EU) 1215/2012)*.

  The Brussels Regulation and Recast Brussels Regulation provide a framework for the recognition and enforcement of judgments in civil and commercial matters by courts or tribunals of any EU member state (including Denmark), in other EU member states (including Denmark). The Brussels Regulation applies to judgments given in proceedings instituted on or before 9 January 2015 and the Recast Brussels Regulation applies to proceedings instituted on or after 10 January 2015. The Brussels Convention has been almost entirely replaced by the Brussels Regulation and Recast Brussels Regulation, but it still applies to a limited number of overseas territories of EU member states.

- The *Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (Lugano Convention 2007). This is an international agreement that governs international jurisdiction. It contains very similar provisions to the Brussels Regime and applies to recognition and enforcement of judgments between EU member states, as well as the European Free Trade Association (EFTA) states of Iceland, Norway, and Switzerland (but not Liechtenstein).

- The *Rome 1 Regulation ((EC) 593/2008)*. This determines the law applicable to contractual obligations between EU member states (except Denmark). It may also assist in relation to recognition and enforcement of foreign processes that fall outside of the scope of the EIR Recast. The application of Rome I does not depend on membership of the EU and Rome I may therefore be applied by EU member states to recognise non-EU (such as English) law contracts. This includes English schemes of arrangement, restructuring plans, or company voluntary arrangements.

- The *Companies Act 2014* (as amended).

- Irish common law.

- Irish court rules.

Insolvency processes, including liquidations, are excluded from the remit of the Brussels Regime and the Lugano Convention. However, it has been reported that the EIR Recast and the Brussels Regime are "intended to dovetail almost completely with each other". The term "judgment" in the Brussels Regime and the Lugano Convention is broadly defined. Accordingly, court orders in receiverships and schemes of arrangement, as well as insolvency-related proceedings that fall outside of scope of the EIR Recast, may be within their scope.

If none of those regimes apply, recognition and enforcement is determined in accordance with Irish common law principles.

International Treaties or Conventions

The Lugano Convention 2007 is an international agreement containing very similar provisions to the Brussels Regime. It applies to the recognition and enforcement of judgments between EU member states, as well as the European Free Trade Association (EFTA) states of Iceland, Norway, and Switzerland (but not Liechtenstein).

UNCITRAL Model Law on Cross-Border Insolvency

Ireland has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. Adoption by Ireland would provide greater certainty and predictability in relation to cross-border insolvencies to which the EIR Recast does not apply, including those involving the US and the UK (both of which are signatories to the Model Law). The Irish Company Law Review Group recommended in its November 2018 report, to the then Minister for Business, Enterprise and Innovation, that the Model Law should be adopted in Ireland.

Applicable Legislation

Corporate insolvency is governed by the Companies Act. Sections 1416 to 1428 of the Companies Act relate specifically to foreign insolvency proceedings (including those governed by the EIR Recast). In particular, section 1417 of the Companies Act

provides for the recognition and enforcement by the Irish High Court of orders made in relation to a winding-up by the courts of non-EU states (and Denmark) in the same way as if the order had been made by the Irish High Court.

Common Law

Where an appropriate international treaty or convention is not applicable, and there is no applicable domestic legislation, jurisdiction in relation to the recognition of foreign insolvency processes is governed by common law principles incorporated in Order 11 of the Rules of the Superior Courts (RSC). Foreign insolvency office holders can apply to the Irish High Court for recognition and an order in aid of the foreign insolvency proceedings under the common law.

Customs and Practice

he legal framework for the recognition of foreign insolvency processes in Ireland is supplemented by the RSC, the Circuit Court Rules, and relevant High Court and Circuit Court Practice Directions. In addition to Order 11, Orders 74 and 74A of the RSC provide procedural rules for the conduct of liquidations and examinerships respectively, including in relation to the application of the EIR Recast.

Requirements for the Recognition of a Foreign Insolvency Process under Domestic Law

The EIR Recast

The EIR Recast is an EU regulation. EU regulations generally have direct effect in Ireland, meaning that no national implementing legislation is required to bring them into force. However, under Protocol 21 of the Treaty on the Functioning of the European Union, Ireland has a choice as to whether it joins specific EU laws in the area of freedom, security, and justice as opposed to being automatically bound. Ireland exercised this right to opt-in to the EIR Recast, as well as in relation to Regulation EU 2021/2260, which made amendments to Annexes A and B of EIR Recast.

The EIR Recast applies to all collective insolvency proceedings and certain restructuring proceedings where a company has its centre of main interests (COMI) in an EU member state (except Denmark). Annex A of the EIR Recast outlines the insolvency processes capable of automatic recognition, while Annex B sets out the insolvency practitioners recognised. Most Irish insolvency processes are recognised under Annex A, including court-approved liquidations, creditors' voluntary liquidations, and examinerships.

Receiverships and schemes of arrangement (within the meaning of sections 449 to 455 of the Companies Act) are not within the scope of the EIR Recast. In addition, the EIR Recast only applies to proceedings that relate directly to the conduct of an Annex A insolvency process. Recognition of proceedings that are not derived directly from an Annex A insolvency process, as well as receiverships and schemes of arrangement, may instead be governed by one of the other conventions or regimes discussed below.

The main insolvency proceedings must be opened in the same jurisdiction as a company's COMI (Article 3, EUR Recast). Therefore, member state courts must actively examine whether the debtor's COMI is located within their jurisdiction before opening insolvency proceedings. There is a rebuttable presumption that an entity's COMI is in the same jurisdiction as its registered office, but the Irish courts have found that a company that is incorporated in a non-EU member state may still have its COMI in Ireland. Special consideration is afforded to creditors and to their perception of where the debtor conducts the administration of its business. There is no look-back period, but the presumption that the COMI is at the registered office of the legal entity does not apply if the debtor has relocated its corporate seat within the three months before presentation of the insolvency petition.

In addition, it has been determined that the Irish courts can appoint an examiner to a related company (within the meaning of section 517 of the Companies Act) that does not have its COMI in an EU member state, on the basis that it has a "sufficient connection" to Ireland.

Main proceedings are regarded to have been opened once a petition for examinership or liquidation has been presented to the court in the COMI country. This has been found by the courts to include the appointment of a provisional liquidator. That court has control of the process and the law of the state that governs the process generally applies even if the company has its business and assets elsewhere. Secondary proceedings may be opened in other EU member states (except Denmark) where the company has an establishment to protect local creditors.

Certain proprietary rights, such as rights of creditors and third parties in relation to security, conveyances, leases, and rights of set off continue to be governed by the law of the state where the property is situated.

If the EIR Recast applies, any insolvency proceeding opened by a member state court with jurisdiction under the EIR Recast must be given full and unqualified recognition in every other member state with no further formalities (Article 19, EIR Recast).

Domestic Legislation

The Irish High Court has jurisdiction to wind up any unregistered company, including a company incorporated outside Ireland, that has been carrying on business in Ireland.

An order made for or during a winding up of a company incorporated outside Ireland by the courts of a country recognised by Ministerial Order under section 1417 of the Companies Act, can be enforced by the High Court as if the order had been made by the High Court. However, no such Ministerial Orders are currently in place. A Ministerial Order under section 1417 cannot be made in respect of other EU member states (apart from Denmark), due to the presence of the Recast EIR.

Common Law

Irish courts have inherent jurisdiction under the common law doctrine of comity of courts to recognise (as opposed to enforce) the orders of non-EU (and Danish) courts for the winding up of companies and the appointment of liquidators. However, they retain discretion to refuse these applications.

The underlying principle for this jurisdiction derives from the principle of universality of insolvency proceedings. The common law position is predominantly influenced by the English courts, given the scarcity of Irish case law dealing with recognition. Uncertainty followed the English Supreme Court decision in *Rubin v Eurofinance SA [2010] EWCA Civ 895, Ch. 133* over the inherent jurisdiction of courts at common law to recognise foreign insolvency proceedings. However, following *Mount Capital [2012] IEHC 97* and *Fairfield Sentry [2012] IEHC 81*, the position appears settled that Irish courts have inherent jurisdiction under common law to recognise foreign insolvency proceedings. The court considers the following factors:

- Whether recognition is being sought for a legitimate purpose.
- Whether there is no prejudice to any creditor in Ireland in affording recognition.
- Whether there is no infringement of any local law in affording recognition.
- Whether the insolvency procedure in the other jurisdiction is sufficiently similar to that in Ireland.

- Whether to afford recognition would not infringe public policy in Ireland.

Procedure for Applying for Recognition of Foreign Insolvency Processes

EIR Recast

Where the EIR Recast applies, recognition by other EU member states is automatic.

A liquidator appointed in foreign insolvency proceedings must submit a certified copy of the judgment under which they were appointed, along with a translation, to the Registrar of Companies (section 1419, Companies Act). The opening of the insolvency proceedings can also be registered where no action is intended to be taken in Ireland.

Where a foreign company subject to an insolvency process under the EIR Recast has an establishment in Ireland, the liquidator must ensure that publication of the judgment opening the proceedings and details of the liquidator appointed is made as soon as is practicable (section 711, Companies Act).

Brussels Regime and the Lugano Convention

The judgments of one EU member state court (including Denmark), including those relating to foreign receiverships and schemes of arrangement, are recognised in other EU member states (Article 36, Recast Brussels Regulation). No special procedure or declaration of enforceability is required. A party seeking to rely on the Recast Brussels Regulation must produce a copy of the judgment (duly authenticated), a certificate containing an extract of the judgment and stating it is enforceable, and a translation of both (where necessary) (Article 37, Recast Brussels Regulation).

Applications for recognition and enforcement under the Lugano Convention require an application to be made on a without notice basis to the Master of the Irish High Court. The application must include an affidavit from the judgment holder, exhibiting the necessary proofs (including the judgment or a certified or authenticated copy), together with the certificate referred to in Article 54 of the Lugano Convention.

A declaration of enforceability from the Irish courts, in accordance with Order 42A of the RSC, is required under the Brussels Convention, the Brussels Regulation, and the Lugano Convention.

Domestic Legislation

Where a Ministerial Order recognises the orders of a particular non-EU country (or Denmark), these orders are recognised and enforced in the same manner and in all respects as if the order had been made by the Irish High Court (section 1417, Companies Act). Applications are made to the Irish High Court by an originating notice of motion, grounded on affidavit (Order 74, Rule 83(3), RSC). However, no such Ministerial Order has been made.

Common Law

If the foreign insolvency process or proceedings are not recognised under the various relevant regulations, treaties, and conventions, the foreign insolvency official must make an application to the Irish High Court for an order recognising the proceedings.

Applications are made by an originating notice of motion (seeking recognition orders), grounded on affidavit containing:

- Details of the foreign insolvency proceedings.
- Evidence of the appointment of the foreign insolvency practitioner.
- Certified copy of the original decision appointing the liquidator/administrator.
- Evidence of equivalence between the foreign and Irish insolvency regimes.
- Evidence of the legitimate purpose for seeking recognition.
- Details of assets/debts in Ireland requiring recovery.

A translation may be required if the foreign decision and other details are not in English or Irish.

Applications are typically made without notice and therefore can be dealt with relatively quickly, but the resulting order can subsequently be challenged by affected parties.

Currently, the cost of filing an originating notice of motion in the Central Office of the High Court is EUR190 and the fee for filing an affidavit is EUR20 (excluding exhibits).

Requirement for Reciprocity

Reciprocity is automatic for the recognition of insolvency proceedings listed in Annex A of the EIR Recast and for the recognition of foreign judgments under the Brussels Regime and the Lugano Convention.

At common law, the Irish courts considers the equivalence between Irish insolvency law and the law of the country the insolvency process originated in, when exercising its discretion to recognise a foreign insolvency process under the doctrine of comity of courts. However, reciprocity of recognition is not an explicit requirement.

Requirement of Connection Between the Foreign Proceedings/Insolvent Debtor and the Jurisdiction in a Court Application

For recognition of foreign insolvency proceedings commenced in non-EU countries to be granted at common law in Ireland, an important factor in the exercise of the court's discretion is whether the debtor has assets located in the jurisdiction.

Court Power to Grant Discretionary Relief to Assist Foreign Insolvency Proceedings

Under either common law or the EIR Recast, the Irish courts can make the same orders as they would if the proceedings had been initiated in Ireland. These include:

- Mareva injunction. An application can be made to the Irish High Court to obtain a Mareva injunction, which prevents a debtor from dissipating or removing assets before or after a judgment.

- Anton Piller order. An application can be made to the Irish High Court, requesting an order for the preservation of evidence where there is a concern a party might move assets or conceal evidence. Anton Piller orders can also include an order to search a premises.

- Preservation measures. An application can be made to the Irish High Court under Article 38 of the EIR Recast for measures to secure and preserve any of the debtor's assets in Ireland for the period between the making of the request to open insolvency proceedings and the judgment opening the insolvency proceedings (section 1425, Companies Act).

- European freezing order. An order can be sought under Regulation (EU) 655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, which applies in EU member states (apart from Denmark). This can be issued without the debtor's knowledge, but it is necessary to show there is a real and urgent risk that the creditor's claim will be impeded if the order is not made.

- Production of documents. The court can, during a winding up, order the production of documents (section 673, Companies Act). English judgments, which are of persuasive value in Ireland, have found that orders for production of documents may also apply to documents held abroad.

- Examination. The court can order the examination of those with information about a company's affairs (section 671, Companies Act). There is English precedent, which is of persuasive value in Ireland, that orders for examination can also be made against persons who live abroad.

Moratorium on Creditor Action against the Debtor

EIR Recast

Any moratorium or stay on creditor action in insolvency proceedings that falls under the EIR Recast is automatically recognised in Ireland. No separate application to the court is required. The EIR Recast covers a broad range of insolvency proceedings (set out in Annex 1), each of which has its own protective measures. The law of the COMI country determines the scope and duration of moratorium or stay, and the courts of the COMI country continue to govern the insolvency process, including any applicable moratorium or stay. Typically, a moratorium or stay will apply to individual enforcement actions, immediate enforcement of security/retention of title rights (although certain secured creditor rights will be preserved), termination of contracts/withholding of performance, and exercise of set-off rights against the debtor.

Domestic Legislation

In a court-ordered liquidation, there is an automatic moratorium on actions against the company, except where leave is given by the court. In an examinership, no enforcement action can be taken against the company, and contracts under which both parties have outstanding obligations cannot be terminated on the grounds of an examiner being appointed, for a period of 100 days.

If a non-EU country (or Denmark) is recognised by Ministerial Order for the purposes of section 1417 of the Companies Act, any order made by a recognised foreign court for or during the winding up of a company, including any moratorium or stay imposed, may be enforced as if it was made by an Irish court. However, no such Ministerial Orders are currently in place.

Common Law

For non-EU insolvency proceedings that fall outside of the scope of the EIR Recast (and in the absence of a judgment that is within the scope of the Brussels Regime), a separate application to the court is required in aid of the foreign insolvency process and the Irish courts may use their inherent jurisdiction to recognise such insolvency proceedings, including any moratorium or stay imposed. This will be fact-dependent and assessed by the court on a case by case basis.

Enforcement of Insolvency-Related Foreign Judgements

Legal Framework

Enforcement of foreign insolvency-related judgments in Ireland is governed by:

- The EIR Recast. Insolvency-related judgments (including preservation measures taken after a request to open insolvency proceedings) can be enforced under the EIR Recast in the manner prescribed under Article 42 of the Brussels Recast. These judgments must derive directly from the insolvency proceedings and be closely linked with them. Article 10 of the EIR Recast outlines the rights of the holder of a retention of title claim in a member state other than the state in which proceedings were opened. It provides that these rights must not be affected by the insolvency proceedings being opened.

- The Brussels Regime and the Lugano Convention (supplemented by Order 42A of the RSC). While insolvency proceedings are excluded from these conventions, they may apply to receiverships, schemes of arrangement, and any insolvency-related judgments that fall outside the scope of the EIR Recast.

- The Hague Conventions (supplemented by Order 42D of the RSC and the European Union (Hague Judgments Convention) Regulations 2023 (S.I. No. 434/2023) (Hague Regulations)). The Hague Convention on Choice of Court Agreements provides for the enforcement of judgments given by a court designated by an exclusive choice of court agreements and the Hague Judgments Convention provides for the enforcement of a broader range of judgments between contracting parties. While "insolvency, composition and analogous matters" are excluded from the scope of these Conventions, they could potentially still form the basis for recognition and enforcement of insolvency-related judgments that fall outside of the exclusion where those involve countries that are not signatories to the Brussels Regime or Lugano Convention, as well as to solvent schemes of arrangement (see below for further detail).

- The Companies Act. Section 1422 of the Companies Act provides for the enforcement in Ireland of foreign insolvency judgments under the EIR Recast and Recast Brussels Regulation.

- Common law (supplemented by Irish court rules). Enforcement is only permissible under common law in respect of money judgments. The judgment in respect of which enforcement is sought must be:
    - for a definite monetary sum;
    - final and conclusive; and
    - handed down by a court of competent jurisdiction, as determined by domestic common law rules of private international law.

These judgments are not directly enforceable. Rather, a foreign creditor must bring an action in Ireland for a simple contract or debt claim by way of summary proceedings.

See also *Enforcement of Judgments: Overview (Ireland)*.

Hague Conventions

As set out above, the Hague Judgments Convention and, to a more limited extent, the Hague Convention on Choice of Courts Agreements, also provide a process for recognition and enforcement of certain foreign judgments.

The Hague Convention on Choice of Court Agreements provides for the recognition and enforcement of judgments in civil or commercial matters by a contracting state court in another contracting state. It is in force for all EU member states (including Denmark), UK, Mexico, Singapore, Ukraine, Albania, Montenegro, Moldova, Switzerland, North Macedonia, and Bahrain. Only certain types of claim are covered by the Convention and only judgments on the merits and those that are final and conclusive can be enforced under it. Enforcement of non-monetary judgments under the Convention depends on the state dealing with the matter.

The Hague Judgments Convention facilitates recognition and enforcement of foreign judgments between contracting states. It is broader than the Hague Convention on Choice of Court agreements but narrower than the Brussels Regime and the Lugano Convention. The EU acceded to and Ukraine ratified the Convention on 29 August 2022 and it came into force between EU member states (other than Denmark) and Ukraine on 1 September 2023. The UK and Uruguay subsequently ratified it and the Convention came into force for Uruguay on 1 October 2024 and for the UK with effect from 1 July 2025. Most recently, Albania and Montenegro have also ratified the Convention and it will come into force for both countries on 1 March 2026, followed by Andorra on 1 June 2026. The Convention applies to both money and non-money judgments. Eligibility also depends on meeting one of various requirements, including that the defendant had a particular connection to the state in which the judgment was issued (for example, as a result of residency or principal place of business).

While "insolvency, composition, and analogous matters" fall outside of the scope of both Hague Conventions, the explanatory reports to both Conventions provide that the exclusion only applies to proceedings that "directly concern insolvency." The Hague Judgments Convention goes on to set out the criteria that a court may consider in deciding whether a judgment is based on insolvency rules (and therefore excluded):

- Whether the judgment was given on or after the commencement of the insolvency proceedings.
- Whether the proceedings from which the judgment derived served the interest of the general body of creditors.
- Whether the proceedings from which the judgment derived could not have been brought but for the debtor's insolvency.

The explanatory report also expressly provides that the Hague Judgments Convention applies to "judgments on actions based on general rules of civil or commercial law, even if the action is brought by or against a person acting as insolvency administrator in one party's insolvency proceedings."

The Hague Conventions could therefore potentially form a basis for the recognition and enforcement of insolvency-related judgments that fall outside of the insolvency exclusion, particularly where they involve countries that are not signatories to the Brussels Regime or the Lugano Convention, as well as to solvent schemes of arrangement.

Applicable Procedure

Where one of the treaties or conventions described below applies, applicants are not required to recommence proceedings in Ireland. However, if the judgment does not fall within one of those regimes, new debt proceedings must be initiated in Ireland.

EIR Recast

Under Article 32 of the EIR Recast, insolvency-related judgments (including preservation measures taken after a request to open insolvency proceedings) can be enforced in the manner prescribed under Articles 39 to 44 of the Recast Brussels Regulation.

The party seeking enforcement must obtain a certificate under Article 53 of the Recast Brussels Regulation from the foreign jurisdiction, certifying that the judgment is enforceable in the member state of origin. The certificate must contain an extract of the judgment and a translation of the judgement (if necessary). The Article 53 certificate and judgment (and any necessary translation) are then served on the person against whom the enforcement is sought prior to the first enforcement measure being taken.

Brussels Regime and the Lugano Convention

For judgments in proceedings commenced after 10 January 2015, no special procedure is required for recognition of a judgment and no declaration of enforceability is required (Article 36, Recast Brussels Regulation). That means a creditor can go straight to the competent enforcement authority in a member state to enforce it. To do that they must have all of the following:

- A copy of the judgment (satisfying the necessary conditions to establish authenticity).
- A standard form (Article 53) certificate from the court that granted the judgment.
- A certified translation of the judgment (if necessary).

However, a declaration of enforceability is required for enforcement under the Brussels Convention, the Brussels Regulation, and the Lugano Convention. This is sought from the Master of the Irish High Court under the provisions of Order 42A of the RSC. This involves an application without notice, by originating notice of motion (if proceedings have not already been commenced in the High Court in relation to the judgment, in which case the application would be made on notice of motion), grounded on an affidavit.

Unless the application is urgent, copies of the originating notice of motion and affidavit should be served on the moving party not later than seven days before the hearing date.

Currently, the cost of filing an originating notice of motion in the Central Office of the High Court is EUR190 and the fee for filing an affidavit is EUR20 (excluding exhibits, which are EUR2 each).

A debtor can challenge the recognition of a judgment under the Brussels Regime and may apply to court, including to limit the proceedings to interim measures or suspend the proceedings. Under the Lugano Convention, the debtor has one month from the date of service to appeal the order (or two months if domiciled in a contracting state other than Ireland).

The grounds on which refusal of recognition can be sought include, among others:

- Where it is manifestly contrary to public policy.

- Where judgment was given in default of appearance and the defendant was not served in sufficient time to allow them to prepare a defence.

See Enforcement of Judgments: Overview (Ireland) for further detail.

Hague Conventions

Enforcement under the Hague Convention on Choice of Court Agreements requires an application to the Master of the Irish High Court, on a without notice basis under Order 42D of the RSC. The application must include an affidavit from the holder of the judgment exhibiting the necessary proofs. An additional exhibit demonstrating the exclusive choice of court agreement is required under the Hague Convention on Choice of Court Agreements. The Master's decision can be appealed within five weeks of service.

The procedure for enforcement under the Hague Judgments Convention is set out in the Hague Regulations. Regulation 6 of the Hague Regulations provides that an application for recognition or enforcement of a judgment under the Hague Judgments Convention should be made under the RSC to the Master of the Irish High Court. However, the RSC have not been updated to provide for the relevant procedure.

For further details of the enforcement procedure under the Hague Judgments Convention, see Practice Note, Hague Judgments Convention: overview: Documents to accompany application for recognition and enforcement.

The Hague Conventions allow an interested party to apply for refusal of both recognition and enforcement. The Hague Convention on Choice of Court Agreements provides that recognition and enforcement can be refused on grounds that the choice of court agreement was void, the party lacked capacity to make it, or the judgment was obtained by fraud. The Hague Judgments Convention contains wider grounds for refusing to recognise and enforce a judgment, including where recognition and enforcement would be manifestly incompatible with public policy grounds and where judgment is for damages that are not compensatory. Contracting countries can also refuse to apply the Hague Conventions on the basis that they have a strong interest in doing so.

Common Law

Under common law, the foreign judgment must comply with the following prerequisites:

- The judgment must be for a definite sum. Therefore, only money judgments can be enforced.
- The judgment must be final and conclusive, which means that it must be final and unalterable by the court that pronounced it (an appeal does not disrupt this unless it has the effect of staying the judgment).
- The judgment must be brought within the relevant limitation period.
- The judgment must be given by a court of competent jurisdiction.
- The judgment cannot be contrary to Irish public policy.
- The judgment must not have been procured by fraudulent means.

- The judgment must be consistent with any prior judgment on the same cause of action between the parties.

An application for leave to issue and serve the proceedings out of the jurisdiction (under Order 11 of the RSC) must be made to the Irish High Court, usually on a without notice basis, with an affidavit. The defendant can seek to set aside service at this stage on the grounds that Ireland is not the appropriate jurisdiction on the basis of comparative cost and convenience.

The following documents must be filed in support of an application for recognition and enforcement under common law:

- A summary summons.
- A grounding affidavit, which:
    - exhibits the judgment that is sought to be enforced and a translation of the judgment or any other documents produced that are not in a recognised language of the local court; and
    - where judgment has been obtained in default, evidences that the party in default was served with the documents instituting proceedings and refers to the fact that the judgment is enforceable in its originating state.
- Proof of service of the judgment if obtained in default.
- A certified translation of the judgment, if necessary.

Currently, the cost of filing a summary summons in the Central Office of the High Court is EUR190 and the fee for filing an affidavit is EUR20 (excluding exhibits, which are EUR2 each).

As a recognised foreign order would have the same effect as a domestic order with respect to enforcement, timelines are similar. Proceedings may be disposed of between six to nine months (depending on judge availability and court term) where no evidence is to be heard. If proceedings are adjourned to plenary hearing, it may take up to two years for proceedings to conclude. The decision can be appealed within 28 days of the order being made.

Enforcement of Schemes of Arrangement

Examinerships (similar to Chapter 11 in the US) are included within the scope of the EIR Recast. There is an increasing trend, where foreign restructuring proceedings would not automatically be recognised, to initiate Irish examinership proceedings where the company in question can establish that its COMI is in Ireland. These proceedings can be run either simultaneously or subsequently to the foreign insolvency process. This has been done successfully in US Chapter 11 proceedings, as seen in the Mallinckrodt , Norwegian Air, and Weatherford restructurings.

While the EIR Recast does not apply to schemes of arrangement, there is scope for recognition across EU member states under the Brussels Regime, the Lugano Convention, Rome 1, and the Hague Conventions. Where a scheme of arrangement is sanctioned by the court of an EU member state, it will come within the scope of those conventions as a civil judgment capable of recognition.

Under Rome 1, if the underlying contracts and debt obligation are governed by the law of an EU member state, then it is possible for the scheme to gain recognition across the EU.

Where no international convention or treaty applies, the common law rules of private international law provide the basis for recognition, which requires an assessment on a case by case basis.

Future Developments

Following the UK's exit from the EU, the EIR Recast only has effect in the UK in relation to proceedings that were opened before the transition period (see *Practice Note, Cross-border insolvencies*). In addition, subject to the ongoing application of relevant transitional provisions of the Withdrawal Agreement between the EU and the UK, the UK's involvement in the Brussels Regime and Lugano Convention also came to an end on 31 December 2020. That means that currently, unless Rome I or the *Hague Convention on Choice of Court Agreements* applies, recognition and enforcement of UK insolvency processes and judgments falls under the common law rules of private international law. However, on 27 June 2024, the UK acceded to the *Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters,* which will have effect in the UK from 1 July 2025.

The UK has adopted the *UNCITRAL Model Law on Cross-Border Insolvency* proceedings, but there is currently no indication as to when Ireland may adopt it.

The European Council and Parliament have recently published their positions on a European Commission proposal for a directive harmonising certain aspects of insolvency law and trilogue negotiations have commenced. The proposal seeks to advance changes across a number of areas, including asset-tracing in relation to insolvency estates (including preservation of assets) and harmonisation of pre-pack procedures. The proposal, which follows the implementation of the EIR Recast and the *Preventive Restructuring Directive ((EU) 2019/1023)*, represents a further step toward harmonising and enhancing the efficiency of insolvency rules across the EU.

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