

## Ireland

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### 1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

The criteria for Irish courts enforcing foreign judgments will depend on whether, or not, the judgment comes within the scope of certain conventions and regulations governing the enforcement of foreign judgments.

#### **Judgments of Courts in EU Member States or European Free Trade Association Member States**

##### *Regulation (EC) No 44/2001 (Brussels I)*

Brussels I on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was implemented in Ireland by The European Communities (Civil and Commercial Judgments) Regulations 2002 (S.I. 52/2002). Brussels I has been repealed and replaced by Regulation (EU) 1215/2012.

Brussels I still applies to judgments, granted by courts in EU Member States and that come within the scope of the regulation, given on or before 9 January 2015 and Order 42A of the Irish Rules of the Superior Courts (RSC) details how the necessary application should be brought before the Irish courts. In order to enforce a judgment under Brussels I, it is necessary to obtain a declaration of enforceability in the Member State in which enforcement is sought.

##### *Regulation (EU) NO 1215/2012 (Brussels I Recast)*

Brussels I Recast on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was implemented in Ireland by the European Union (Civil and Commercial Judgments) Regulations 2015 (S.I. 6/2015) and came into effect on 10 January 2015, applying to judgments, granted by courts in EU Member States and that come within the scope of the regulation, given on or after that date.

Brussels I Recast applies between all EU Member States and it applies in civil or commercial matters. However, it does not extend to revenue, customs or administrative matters, or in matters where the state is liable for any acts or omissions in exercising its authority. Similar to other multilateral instruments, Brussels I Recast does not apply to family law matters, bankruptcy or insolvency matters and arbitral awards.

Brussels I Recast provides that, subject to exceptions, an applicable judgment handed down in an EU Member State will be automatically recognised in other Member States without any special procedure being required. It has removed the requirement for a court application and the need to produce a declaration of enforceability, as required by its predecessor, Brussels I. Instead, any party seeking to rely on Brussels I Recast is required to produce a copy of the judgment duly authenticated, a certificate and where necessary, a translation of the judgment and certificate. The certificate should certify that the judgment is enforceable and contain an extract of the judgment. Where required, the certificate will also include relevant information on the recoverable costs and the calculation of interest.

An application for the adaptation of a measure or an order in a judgment will require an *ex-parte* (ie, without notice to the other side) application to the Master of the High Court. Such an adaptation may not result in effects going beyond those provided for in the law of the Member State of origin. If the Master of the High Court does make an order adapting a measure or an order in a judgment, it will be necessary to serve a copy of the order on the person against whom enforcement is sought.

Brussels I Recast provides that execution of a judgment given in another Member State is governed by the domestic law of the court in which the enforcement is sought and so for a foreign judgment being enforced in Ireland, the limitation period to enforce the judgment is 12 years from the date on which it was given or made, subject to the proviso that permission will be needed from an Irish court to execute a judgment following six years from the date on which it was given or made.

*Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention 2007)*

The Lugano Convention 2007 was implemented in Irish law by the Jurisdiction of Courts and Enforcement of Judgments (Amendment) Act 2012. It is an agreement between the EU and three of the European Free Trade Association member states, namely, Iceland, Norway and Switzerland. It governs the recognition and enforcement of judgments between EU Member States and the other countries that are party to the convention. The Lugano Convention 2007, broadly speaking, provides for a regime that is similar to the position adopted by Brussels I. It requires a court application to have the foreign judgment to which the Lugano Convention applies declared enforceable.

The necessary application is made, on an *ex-parte* basis, to the Master of the High Court. Order 42A RSC sets out the procedural rules for such an application, which is made by way of a motion, grounded on an affidavit. The exhibits to the affidavit will need to include the judgment which is sought to be enforced or a certified or duly authenticated copy, together with a certificate issued pursuant to Article 54. Where applicable, it will also be necessary to exhibit documentation establishing service of the proceedings, evidence that the judgment is enforceable and documentation on legal aid. The affidavit grounding the application for enforcement will need to state whether the judgment provides for the payment of a sum of money, the position with interest, an address for service of proceedings and the grounds on which the right to enforce the judgment is vested in the party making the application.

Once a judgment is recognised, it will be deemed enforceable and have the same force and effect as under Irish law. It, therefore, will remain available to enforce against for 12 years from the date on which it was given or made, subject to the proviso that permission will be needed from an Irish court to execute judgment following six years from the date on which it was given or made.

The Lugano Convention applies to civil and commercial matters but does not extend to matters such as tax and customs, administrative matters, certain family law matters, bankruptcy and arbitral awards.

*Regulation (EC) No 805/2004 (as amended by Regulation (EC) No 1869/2005 and Regulation (EC) No 1103/2008) (European Enforcement Order)*

The European Enforcement Order regime allows for a judgment in an uncontested claim delivered in one EU Member State to be enforced in another EU Member State. It dispenses with the requirement for a party to seek approval of the judgment by the courts of the Member State in which the judgment is being enforced.

The regulation applies to judgments, court settlements and authentic instruments on uncontested claims. A claim is uncontested if the debtor has:

- expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings;
- never objected to it, in compliance with the relevant procedural requirements under the law of the member state of origin in the course of court proceedings;
- not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, providing that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the laws of the member state of origin; or
- expressly agreed to it in an authentic instrument.

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.

### **Judgments of courts in EU Member States and Non-EU Member States**

*Convention on Choice of Court Agreements (Hague Convention 2005)*

The Hague Convention 2005 provides a framework for the recognition and enforcement of judgments made in contracting states. It applies only to disputes relating to civil or commercial matters that contain exclusive choice of court agreements. Once judgment is given in the chosen contracting state, the judgment must be recognised and enforced in all other contracting states, except where one of the specified grounds for refusal applies. Contracting states currently include those in the EU, Mexico, Singapore, and the UK.

The Hague Convention 2005 was implemented in Ireland pursuant to the Choice of Court (Hague Convention) Act 2015.

For a judgment to come within the scope of the Hague Convention 2005: (1) the relevant court of the contracting state chosen in the exclusive choice of court agreement must hear the case, unless the agreement is declared null and void; and (2) any court seized, but not chosen in the exclusive choice of court agreement, must dismiss the case unless one of the exceptions applies.

An application for enforcement of a judgment in Ireland where the Hague Convention 2005 is applicable is initiated by way of an *ex-parte* application to the Master of the High Court pursuant to Order 42D of the RSC. An application must be supported by a sworn affidavit setting out the details of the dispute. The affidavit should include details on any sum of money payable under the judgment, the position with interest, any damages that have been awarded, the grounds on which the application to enforce the judgment in Ireland is being made and confirmation that the judgment has not been previously satisfied.

The affidavit must also exhibit the documents being relied upon, including:

- a certified copy of the judgment;
- an original or certified copy of the exclusive choice of court agreement;
- if it was a judgment in default, a copy of a document evidencing that the defaulting party was on notice; and
- any document necessary to show that the judgment has effect or is enforceable in the state the judgment was made.

*The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ('Hague Convention 2019')*

The Hague Convention 2019 came into force in Ireland on 1 September 2023 pursuant to European Union (Hague Judgments Convention) Regulations 2023 (S.I. 434/2023). It has also come into force in the rest of the EU (excluding Denmark) and in Ukraine.

The Hague Convention 2019 provides for the recognition and enforcement of a court judgment from one contracting state in the courts of another with no further review of the merits of that judgment. Exceptions to the recognition and enforcement are limited to specified grounds, such as public policy, due process, or where it is inconsistent with a prior judgment.

The Hague Convention 2019 is much broader in scope than the Hague Convention 2005 and all jurisdictions are eligible to become a party to it, albeit the number of contracting states currently is limited. As such, it has the potential to be a prevalent solution for the recognition and enforcement of foreign court judgments.

It applies to civil and commercial judgments and does not apply to criminal, revenue, customs or administrative matters, family law matters, insolvency, privacy, intellectual property and interim measures.

### **Other judgments**

*Enforcement of judgments pursuant to common law*

If a judgment granted by a foreign court does not come within the scope of the specific conventions or regulations detailed above, the recognition and enforcement of such a judgment will be subject to common law enforcement principles. The common law rules do not allow for direct enforcement of foreign judgments. Instead, the holder of the judgment can commence fresh legal proceedings, which effectively involve suing on the judgment as a debt.

Where proceedings to enforce the foreign judgment are to be brought in Ireland against a party which is outside the jurisdiction, an application for leave to issue and serve the proceedings outside the jurisdiction will be required.

In order to recognise and enforce a foreign judgment under common law rules, the following criteria must be satisfied:

- the judgment must be for a definite liquidated sum;
- the judgment must be final and conclusive, which means it must be unalterable by the court that pronounced it – if an appeal is pending, a judgment may still be considered final and conclusive, unless the appeal has the effect of staying the judgment; and
- the judgment must be given by a court of competent jurisdiction.

Defences to the recognition and enforcement of a foreign judgment include:

- the court of the foreign state did not have jurisdiction to give the judgment;
- the foreign judgment relied upon is impeachable for fraud;
- the judgment is contrary to public policy; or
- the foreign proceedings on foot of which the judgment was granted were contrary to natural justice.

### *The UK post Brexit*

Following the UK's departure from the European Union, Brussels I Recast will only apply to cases where proceedings were commenced in the UK before 11pm on 31 December 2020.

The UK has applied to accede to the Lugano Convention 2007 as a non-EU country, but this application has not yet been approved.

As matters currently stand, for cases commenced in the UK on or after 1 January 2021, common law rules and the Hague Convention 2005 are the applicable regimes for the recognition and enforcement of UK judgments in Ireland.

## **2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?**

There are currently no particular considerations which apply to the enforcement of a foreign judgment against a foreign state in Ireland, either in terms of specific formal notice or procedural actions. There are certain situations in which the Attorney General

(adviser to the government) must be joined as a party to litigation, for example where a provision of the Irish constitution, *Bunreacht na hÉireann* ('Constitution of Ireland'), is being challenged. However, that obligation does not arise in the case of enforcement being sought against a foreign state.

The standard provisions for notice under the applicable regime for enforcement of a foreign judgment would be applicable. For example, under Brussels I, notice of an order made by the Master of the High Court enforcing a judgment, along with the order, must be served on the party to whom it is directed. The notice should contain full particulars of the judgment declared enforceable, the name and address of the party making the application, the right of the person against whom the order is made to appeal to the High Court against the order and the period within which any such appeal may be brought. Similarly, under the Lugano Convention 2007, the judgment debtor is to be given notice of the entitlement to appeal to the High Court. Under Brussels I Recast, the certificate issued pursuant to Article 53 must be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate must be accompanied by the judgment, if this has not already been served.

Irish case law (*Brady v Choiseul t/a Potato Services, SJ McCreight (Potatoes) Ltd and Department of Agriculture and Rural Development [2016] IEHC 552*) has shown that where a foreign state or head of state is sued in Ireland, the Irish courts will look to the subject matter of the litigation to determine whether the activity concerned is of a public rather than a private nature.

The fundamental principles of *jus gestionis* and *jus imperii* are adhered to in cases where a foreign state or state agent is a party to litigation in Ireland. *Jus gestionis* allows for a foreign state to be pursued in Irish courts where the subject matter of the claim is contractual and does not involve the exercise of any state power. In contrast, according to the principle of *jus imperii*, a foreign state may not be pursued where the litigation involves a challenge to the manner in which the foreign state or public body exercises the public law powers of their jurisdiction.

**3. What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?**

Ireland is not a signatory state to the European Convention on State Immunity 1972. However, under Article 29.3 of the Constitution of Ireland, the Irish State accepts the 'generally recognised principles of international law as its rule of conduct in its relations with other states'.

The Supreme Court of Ireland held in, *Saorstát and Continental Steam Ship Company v De Las Morenas [1945] IR 291*, that the 'immunity of sovereign states and their rulers from the jurisdiction of the courts of other states' had 'long been recognised as a principle of international law' and so pursuant to Article 29.3 of the Constitution of Ireland, it 'must now be accepted as a part of our municipal law'

However, subsequent case law indicates that sovereign immunity is not recognised as an absolute immunity in Ireland and instead, it exists on a more restricted basis.

	<p>In <i>Government of Canada v Employment Appeals Tribunal</i> [1992] IR 484, it was noted that the general principles of international law have so developed as to depart from the absolute state immunity doctrine to a more restrictive view of sovereign immunity. While it still exists, its application is restricted. In particular, the court found that if the activity in question truly touches the business or policy of the foreign government then immunity should still be accorded to such activity, but the doctrine of foreign immunity does not apply in respect of commercial or trading activities in which a foreign government participates.</p> <p>As such, in Ireland, sovereign immunity is not absolute and acts of foreign states with elements of private law in commercial transactions may be actionable while those in traditional public functions will not be.</p> <p>In relation to diplomatic immunity, Ireland ratified the Vienna Convention on Diplomatic Relations on 10 May 1967 by virtue of the Diplomatic Relations and Immunities Act 1967. Under the convention, foreign diplomatic agents enjoy immunity from the criminal, civil and administrative jurisdiction of the receiving state. There are exceptions to the immunity afforded by the convention, including actions relating to private immovable property, actions relating to succession and ‘an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official function’.</p>
<p><b>4.</b></p>	<p><b>What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?</b></p>
	<p>As noted in the response to Question 3, in Ireland, sovereign immunity is not an absolute immunity. For example, sovereign immunity has been restricted to exclude protection for a state or an agent of a state involved in commercial or trading transactions. However, the Irish courts have not departed from the principle of sovereign immunity if the activity in question involves the exercise of state power or policy of the foreign government.</p> <p>For example, the Irish courts have applied the doctrine of sovereign immunity to a potentially tortious act carried out by the army of a foreign state on the basis of it being governmental activity on behalf of that sovereign state.</p> <p>In <i>McElhinney v Williams and Secretary of State for Northern Ireland</i> [1995] 3 I.R. 382, the first defendant, a corporal in the British Army stationed in Northern Ireland, was alleged to have assaulted the plaintiff in the jurisdiction of Ireland in the course of carrying out his duties at a checkpoint on the border between Ireland and Northern Ireland. The plaintiff’s cause of action was a claim for damages in tort. The Supreme Court held that the first defendant was engaged in governmental activity on behalf of a sovereign state and was thus entitled to immunity. The court rejected the plaintiff’s submission that it was a principle of international law that immunity should be restricted in respect of tortious acts causing personal injuries, even where resulting from governmental activity.</p> <p>The Irish court has also applied sovereign immunity in respect of a police officer performing duties on behalf of a sovereign state. In <i>Schmidt v Home Secretary of the</i></p>

	<p><i>Government of the United Kingdom [1997] 2 I.R. 121</i>, the court found that although the third defendant, a police constable in the UK Metropolitan Police, had acted wrongfully, resulting in the plaintiff issuing proceedings in Ireland claiming damages for false imprisonment and trespass to the person, he had done so in the purported performance of his duties and thus, enjoyed immunity.</p> <p>In <i>Brady &amp; anor v Oliver Choiseul T/A Potato Services, S.J. McCreight (Potatoes) Limited and Department of Agriculture and Rural Development [2016] IEHC 552</i>, the High Court held that once the party concerned is properly regarded as being an agent of the state, the only question to be answered is whether the activity concerned is of a public rather than a private nature. In this case, it was held that the defendant was at all times engaged in governmental activity in a public law capacity and its actions attracted sovereign immunity.</p> <p>As such, in Ireland, there is no jurisprudence to support a contention that improper acts of a state would result in an exception to sovereign immunity, albeit the Irish courts have not considered matters from the perspective of wars of aggression perpetrated by a foreign state.</p>
<p><b>5.</b></p>	<p><b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b></p>
	<p>There are no additional due process standards that apply in proceedings for the enforcement of judgment against a foreign state.</p> <p>However, under Brussels I, Brussels I Recast and the Lugano Convention 2007, the Irish court can refuse to enforce any judgment where it is manifestly contrary to public policy or where the judgment was given in default and the defendant was not served with the document that instituted the proceedings or equivalent in sufficient time and in such a way as to enable the defendant to arrange a defence. Under Brussels I Recast, the onus is on the person against whom enforcement is sought to make an application for refusal of enforcement of a judgment given in another member state.</p> <p>Under the Hague Convention 2005 and the Hague Convention 2019, the Irish court can refuse to enforce a judgment where it is inconsistent with Irish public policy, including where the proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness.</p> <p>Under the common law right of the Irish courts to enforce a foreign judgment, a recognised ground for the Irish courts to refuse to enforce is where that judgment was obtained in proceedings that were contrary to Irish public policy or contrary to natural justice.</p> <p>In terms of considering the due process and fair procedures standards existing in Ireland, it is noted:</p> <ul style="list-style-type: none"> <li>• the European Convention on Human Rights, to which Ireland is a party, provides that a person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;</li> </ul>

	<ul style="list-style-type: none"> <li>• Article 40.3 of the Constitution of Ireland provides that the Irish State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen. This includes the principles of natural justice relating to fair procedure, including an entitlement to be heard and that a person making the decision should not be biased;</li> <li>• court rules and practice (including the Rules of the Superior Courts) and the law of evidence provide rules which uphold the principles of fair procedures in the context of court proceedings; and</li> <li>• the Irish courts have held that due process means having a right to a fair and complete hearing of the issues of law and fact in any proceedings. The courts have an inherent jurisdiction to stay or dismiss proceedings which abuse the due process of the administration of justice and where to do otherwise would seriously undermine its effectiveness or integrity (<i>Re Vantive Holdings</i> [2009] IESC 69).</li> </ul>
<b>5a.</b>	<b>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</b>
	<p>Proper service is a fundamental issue that will be considered by the Irish courts when deciding on an application for enforcement of a foreign judgment. The Irish courts have identified the purpose of proper service as being ‘to ensure that the party concerned is adequately informed of the matters contained in the notice so as to suffer no prejudice’ (<i>Lancefort Ltd v An Bord Pleanala</i> [1997] IEHC 83).</p> <p>Brussels I, Brussels I Recast and the Lugano Convention 2007 include as exceptions to the recognition and enforcement of foreign judgments a scenario whereby a defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange a defence.</p> <p>However, if it can be evidenced that the defendant was made aware of the proceedings and failed to take steps in relation to them when it was possible to do so, it is unlikely that the recognition and enforcement of a judgment will be capable of being resisted pursuant to this exception.</p> <p>The Hague Convention 2005 and the Hague Convention 2019 provides that recognition or enforcement may be refused if the defendant was not notified in sufficient time and in such a way as to enable them to arrange their defence or if the proceedings were notified to the defendant in a manner incompatible with fundamental principles of the requested state concerning the service of documents.</p> <p>At common law, recognition and enforcement of a judgment may be refused if the judgment involved is contrary to the principles of natural justice and public policy. Therefore, a defendant could seek to resist recognition and enforcement of a judgment before the Irish court on the basis of the absence of proper service or notice of the proceedings, or where a defendant was not afforded sufficient opportunity to arrange for a defence to be raised.</p>

	<p>Methods of service which are accepted by the Irish courts will depend on the relevant underlying rules. Such methods can include:</p> <ul style="list-style-type: none"> <li>• personal service;</li> <li>• service on a company by leaving the document at or sending it by post to the company’s registered office; or</li> <li>• service on the party’s solicitor (where the solicitor has authority to accept service).</li> </ul> <p>The list is not exhaustive, insofar as the Irish courts are willing to permit service by other means (on foot of an order for substituted service or an order deeming service good) in certain circumstances. Such other means of substituted service can include:</p> <ul style="list-style-type: none"> <li>• email;</li> <li>• notice in a newspaper circulating in the area in which the defendant is believed to be;</li> <li>• social media; or</li> <li>• WhatsApp.</li> </ul> <p>In addition, the Irish courts have been willing to accept a method of service that is approved by a foreign court.</p>
<b>5b.</b>	<b>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</b>
	<p>To our knowledge, there are no exceptions that the Irish courts have considered where conventional means of service against a state are impossible. However, it could be expected that the Irish courts would be willing to consider alternative means of service to those outlined in the response to Question 5a, above where it can be demonstrated to the satisfaction of the court that the fundamental purpose of service will be achieved in some other (albeit novel) way.</p>
<b>5c.</b>	<b>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</b>
	<p>No standard of legal representation has been stipulated by the Irish courts.</p> <p>In Irish proceedings, individuals may choose not to engage legal representatives and to represent themselves instead. However, a company cannot represent itself.</p>
<b>5d.</b>	<b>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</b>
	<p>As there are no standards that have been stipulated, there are no exceptions.</p>

<b>6.</b>	<b>What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?</b>
	<p>The existence of a sovereign immunity in respect of the execution of a judgment against the assets of a state has not been explicitly determined. However, sovereign immunity is generally considered to protect states from having their assets being enforced against to satisfy judgments and precludes authorities of one state from taking measures of constraint against the property of another state to satisfy the demands of creditors pursuant to court decisions. As noted, under Article 29.3 of the Constitution of Ireland, the Irish State accepts the ‘generally recognised principles of international law as its rule of conduct in its relations with other states’.</p> <p>Given that Ireland has departed from an absolute state immunity doctrine to one that exists on a more restricted basis and which does not apply in respect of commercial or trading activities in which a foreign government participates, it is possible that immunity in respect of enforcement against the property of a state will not apply if either: (a) the state has given written consent; or (b) the property in question is in use or intended for use for commercial purposes.</p> <p>The United Nations Convention on Jurisdictional Immunities of States and their Property 2004 deals with the area of state immunity from execution and reflects, in parts, customary international law. While Ireland is not a party to this convention, it is bound by the rules of customary international law.</p>