

Post Brexit Jurisdiction and Enforcement of Judgments

Following the end of the Brexit transition period on 31 December 2020, we have received several enquiries as to how jurisdiction and enforcement of orders in cross-border disputes will be determined as from 1 January 2021.

Proceedings started up to 31 December 2020

When proceedings started before 31/12/2020, within the European Union (EU), the rules on which country's courts have jurisdiction over a dispute and the enforcement of judgments will continue to be determined by the Brussels I Regulation and the Lugano Convention, which provides for the parties' contractual choice of jurisdiction and judgments from the courts of member states are recognised and enforceable across the EU.

Proceedings started after 1 January 2021

Post Brexit, the Brussels I Regulation and the Lugano Convention will no longer rule the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters when one of the parties is domiciled in the United Kingdom (UK).

In order to address this issue, the UK has taken some actions which include applying to join the Lugano Convention in its own right. Although the Lugano Convention would offer a similar framework to the Brussels Regulation, the process to its approval will take months and a decision from the EU on the UK's accession is still pending, in other words, it is not guaranteed.

In the meantime, jurisdiction and enforcement of judgments for matters issued in the UK will be determined by common law, supplemented by the Hague Convention 2005 (the HC2005), which UK has acceded in its own right with effect as from 1 January 2021. The HC2005, to which all EU member states are party, requires the court of choice in an exclusive choice of court clause to hear the case and prevents the courts of the other countries from hearing proceedings when they are not the chosen court. Therefore, parties may now consider adding exclusive jurisdiction clauses in their contracts to avoid future disputes on this matter.

In addition, the HC2005 requires any judgment rendered by the chosen court to be recognised and enforced in the courts of all other contracting parties. Moreover, many EU member states enforce foreign judgments under their national laws, regardless of

international arrangements. This is the case in the UK and Spain; among others. However, there may be additional requirements, and thus more time and cost involved.

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