Cooley

Brexit – Recognition and Enforcement of Judgments

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The Recast Brussels Regulation[1] (the "**Recast Regulation**") currently governs recognition and enforcement of judgments in EU Member States for proceedings issued on or after 10 January 2015. The previous Brussels Regulation[2] does the same for proceedings issued before that date. These Regulations are intended to ensure that judgments issued by a Member State's courts are recognised and enforceable in other Member States.

The enforcement regime under the Recast Regulation will remain in force in the UK until the UK formally exits the EU. The extent to which the current regime will continue to apply will depend on the outcome of the negotiations between the UK and the EU concerning relationships post exit. The main area of concern about the Regulations has been their impact on the enforceability of arbitration agreements and this may influence the likelihood or not of the UK adopting the Recast Regulation[3].

Possible options

If the Recast Regulation is not adopted, there are the following options for the UK:

- Sign and ratify the 2007 Lugano Convention, which imposes a similar enforcement regime to the Recast Regulation on EU Member States and three of the four European Free Trade Association countries, namely Iceland, Norway and Switzerland (but not Liechtenstein);
- Negotiate individual treaties with EU Member States that provide for mutual recognition and enforcement of judgments similar to the arrangements in place for most States since the 1930s;
- Negotiate appropriate amendments to the Recast Regulation so that the current enforcement regime continues to apply in a revised form; or
- Do nothing.

The first three options should provide an appropriate framework for the recognition and enforcement of judgments and will require the co-operation of other States, who are likely to be attracted by the fact that judgments of their own courts will be enforceable in the UK. However, it is possible that enforcement of UK court judgments in other countries will become more complicated, at least procedurally, under any of these three options.

The final option, doing nothing, is also the worst option. In such a situation, the enforceability of a UK judgment in the EU will depend on the law of the Member State in which enforcement is being sought. This will lead to increased levels of delay, uncertainty and expense. However, international principles of comity allow similar, like-minded jurisdictions to recognise and enforce each other's judgments, but this option is still likely to lead to significant additional uncertainty and expense.

The effect on arbitral awards

The regime governing international enforcement of arbitral awards, which is set out in the New York Convention[4], will not change. The UK is a signatory to this Convention in its own right, as are all other EU Member States, and the applicability of this Convention will not be affected by Brexit.

Key takeaway

It is impossible at this stage to identify which of the options set out above (if any) will be implemented in a post Brexit world. As negotiations develop regarding the terms of exit from the EU and it becomes clear which of the likely paths the UK may follow, there may be pressure to obtain judgments and enforce them under the existing regime before it changes, particularly if the "do nothing" option appears to be gaining ground and/or there will be a gap between exit and the adoption of a different option.

Notes

1. Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)
2. Council Regulation (EC) 44/2001of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
3. See Allianz SpA and Others v West Tankers Inc – Case C-185/07 and its progeny
4. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

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