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ENFORCEABILITY OF JUDGMENTS POST-BREXIT

Government guidance published on 13 Sept 2018 'Handling civil legal cases that involve EU countries if there's no Brexit deal' has suggested the system will revert to the existing domestic common law and statutory rules. But how does the 'B' word affect the bigger picture of enforcing judgments?

The Current State of Affairs

Enforcement of judgments in one EU State in the court of another EU state governed by Recast Brussels Regulation (1215/2012) ('the Recast'), this being applicable to both civil and commercial matters.

"A judgment given in a member state which is enforceable in that member state shall be enforceable in the other member state without any declaration of enforceability being required" (Article 39)

This includes money judgments, costs orders, as well as non-money judgements such as injunctions, interim orders and freezing injunctions and in some circumstances default judgments

Post Brexit State

The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 repeals the Recast resulting in that after exit day it will not be possible to enforce an EU27 Judgment in the English Courts under the Recast Brussels Regulation.

If an EU27 judgment is obtained on or before exit day then you will be able to enforce that judgement in English Courts after exit day under the Recast.

The EU stance is that EU27 courts will not apply the Recast to any English judgment obtained prior to exit day, any proceedings pending before exit day including enforcement action, and proceedings instituted after exit day, will not be upheld.

Other Options

Both EU27 and English judgment enforceability post exit will also be subject to whether the UK, as currently intended has become a contracting state of the Hague Convention ('HC'). If there is an exclusive jurisdiction agreement ('EJA') the HC states the Contracting States are required to enforce any judgment made by the specified court (but must meet the 4 criteria for the convention to apply).

To Conclude

If we leave the EU with no-deal then English court judgments will no longer be subject to the European regime for enforcement.

For judgments (and interim remedies) falling outside the scope of the *Hague Convention*:

- Enforceability of *English judgments* in EU Member States would depend on the national law of each EU Member State in which enforcement is being sought. This is likely to make enforcement of such judgments across the EU a slower, more expensive and uncertain process.
- Enforcement of *EU Member State judgments* in England and Wales would be undertaken in accordance with common law rules, which would generally require fresh proceedings to be commenced to enforce the judgment as a debt. This is less straightforward than the current procedure under the Recast, but generally speak it can be overcome and judgments from non-EU countries, such as the United States, are already regularly enforced in this way.

Clarity still required as to application of Hague Convention in both UK and EU27 Courts post Brexit.

Considerations

Parties seeking to enforce judgments post Brexit will need to consider the specific domestic enforcement rules and mechanisms in the state in which they are seeking to enforce. They will need to understand the details and procedure that will apply.

It is still possible to enforce judgments within the EU but this will most likely be more restrictive than the current rules in place for EU judgments