

## Four reasons why Ireland should be top of the jurisdiction shopping list of international businesses

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International business prefers the certainty of common law, likes choice and requires certainty. There is an increasing number of international businesses jurisdiction shopping following Brexit. These businesses may previously have opted for the Courts of England and Wales as an appropriate jurisdiction in choice of law clauses in commercial contracts but they are now revising their jurisdictional preferences since the departure of the UK from the EU trading block.

There are a number of reasons that the Irish Courts are in a unique position to capitalize on international business jurisdiction shopping in the context of choice of law clauses in commercial contracts.

### **1. Ireland is the only English-speaking jurisdiction in the European Union.**

It is an unquestioned assumption that English is the language of business, certainly in the Western world and that English is an appropriate language for formal situations and for cross linguistic communication in a business context.

### **2. Ease of enforcement of Irish Court Orders in EU/Common law jurisdictions**

Where an Irish judgment falls within the scope of Regulation (EU) 1215/2012 (Brussels I recast), as implemented into Irish law by the EU (Civil and Commercial Judgments) Regulations 2015 (SI 6/2015), it will be automatically recognised and enforceable in other European jurisdictions, provided that one of the Regulation exceptions pursuant to Article 45 do not apply. Exceptions under Article 45 include situations in which recognition/enforcement of such judgments would be contrary to public policy, where there are issues with good service of legal documents and

where the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought. There are further exceptions in relation to insurance contracts, consumer contracts, contracts of employment etc. but generally the enforcement of judgments relating to commercial contracts should be relatively straightforward.

### **3. Judicial excellence of the Irish Courts**

The most relevant Irish court from the perspective of international business is the Commercial Court division of the High Court. Established in 2004, this Court hears a broad range of cases including those concerning breach of contract, tort, mergers, schemes of arrangement, judicial review and public procurement. It is a requirement that there is a significant commercial aspect to cases listed in the Commercial Court involving sums in excess of €1 million but generally the value of cases listed in the Commercial Court is significantly in excess of this.

At a recent webinar hosted by Ireland for Law, a Government led initiative to promote the use of Irish legal services by the international business community, the Judge in charge of the Commercial Court, Mr Justice David Barniville commented that the Commercial Court is becoming of increased international significance with an international dimension even more likely since Brexit. He cited a number of recent international cases dealt with by the Commercial Court, including the collapse of the Madoff scheme, the Trafalgar litigation and the recent Air Moldova case relating to the enforcement of a London arbitration award. Mr Justice Barniville commented on the requirement in such cases for Irish judges to learn about and understand procedure in foreign jurisdictions. In recent cases in particular, this was all achieved by Irish Judges remotely.

### **4. Capability of the Irish Courts to conduct hearings remotely**

The pandemic has had a significant impact on the Irish Courts and has facilitated the rise in popularity of the Irish Courts a jurisdictional seat in choice of law clauses. The Supreme Court, Court of Appeal and High Court have had to transition rapidly from physical to remote operations and hearings. Prior to Covid-19, the Irish Courts had no real experience of remote hearings. While the Civil and Criminal Law (Miscellaneous Provisions) Act 2020 (the Act) has now been enacted, the transition to remote hearings commenced with no strong legislation underpinning the transition. The Commercial Court of its own initiative made an order directing that proceedings should proceed remotely in the recent IBRC v Browne case [2021] IEHC 83, when Mr Justice O'Moore said that the Court had a wide discretion under Section 11(2) of the Act with regard to making such Orders.

The Irish Courts have successfully managed the adjustment from physical to virtual Courtroom and the judiciary, court services and legal practitioners have absorbed the skills required to

operate remotely in a very short period of time. The result of this pivot is that the Irish Courts are now capable of hearing and are routinely hearing international disputes remotely. This facility makes it even more attractive and viable as a venue for international dispute resolution.

In consideration of the ability of the Irish courts to conduct proceedings through an accessible language, the enforceability of Irish judgments, the expertise and skill of Irish judges and now the facility of the Irish Courts to conduct full hearings remotely, it is no surprise that international businesses are amending their choice of law clauses in commercial contracts in droves in favour of the Irish jurisdiction.

For further information on this topic please feel free to contact Elaine White via her contact details below.

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