

Recognition and enforcement of UK judgments in Switzerland post no-deal Brexit

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Dispute Resolution analysis: How will a no-deal Brexit affect the enforcement of judgments between the UK and Switzerland? Dr Urs Feller, partner, Marcel Frey, counsel and Michaela Kappeler, associate, at Prager Dreifuss Ltd, Zurich, discuss how this is likely to be impacted and the rules that will apply in relation to UK judgments rendered prior to and after exit day.

How are UK judgments currently enforced in Switzerland?

Switzerland is not a Member State of the EU. Therefore, the Lugano Convention on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters from 2007 (the Lugano Convention) is currently applicable in most private law cases between Switzerland and Member States of the EU.

Under Swiss law, a party seeking to enforce a monetary UK judgment in Switzerland can either do so by:

- requesting a payment summons against a Swiss-based counter party based on the judgment
- applying for recognition of the judgment in separate (exequatur) proceedings and pursuing enforcement by debt enforcement thereafter. The procedure is summary in nature and quick (see in more detail below)

Will that regime no longer apply following a no-deal Brexit?

Our current understanding is that after exit day the UK will cease to be a party to the Lugano Convention since the UK will no longer be a Member State of the EU. This would result in the non-applicability of the Lugano Convention regarding recognition and enforcement of UK judgments given in proceedings after exit day (see below for judgments given pre exit day or where proceedings were commenced pre exit day).

Consequently, the courts of Switzerland will apply the Swiss Private International Law Act 1989 (PILA) in cases of an international context, unless another treaty—such as the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations—applies. The enforcement process for foreign judgments is more demanding under the regime of PILA than under the Lugano Convention.

The conditions for recognising a UK judgment under PILA (which is a prerequisite for enforcing a judgment) are:

- the jurisdiction of the UK court rendering the judgment was established
- no ordinary judicial remedy is available against the judgment in the UK or the judgment is final
- no Swiss grounds for refusal of recognition exist. Such grounds for refusal include, for example:
 - if the decision is obviously incompatible with Swiss public policy
 - if one party was not duly summoned
 - if the right to be heard was violated
 - if proceedings involving the same parties and the same subject matter were first brought in Switzerland

This means, *inter alia*, that foreign ex parte decisions cannot be enforced in Switzerland for lack of adherence to the right to be heard. At the same time, UK declaratory judgments are not enforceable in Switzerland, since no actual enforcement steps can be ordered.

As noted, ordinary debt collection proceedings are a way to enforce UK monetary judgments. One can directly commence such proceedings—with an incidental recognition of the UK judgment by the court in a case of setting aside an objection against such debt collection by the Swiss resident debtor. The difference from the current enforcement of monetary UK judgments (see above) is that the recognition of UK judgments will no longer be governed by the Lugano Convention but by PILA.

What will be the process for enforcement of a UK judgment in Switzerland post Brexit? If the judgment was given pre exit day

In our view, the enforcement of judgments rendered prior to exit day should continue to be governed by the Lugano Convention, where applicable.

If the judgment was given post exit day in proceedings commenced pre exit day

The situation is currently unclear when it comes to the enforcement of UK judgments rendered after exit day where proceedings were instituted prior to exit day. It remains to be seen whether the Swiss courts will apply the general principles of *droit acquis* (acquired rights), non-retroactivity and legal certainty and conclude that the Lugano Convention is still applicable to such cases. The other option is that enforcement of such judgments will be governed by national law (namely PILA) only (see above for implications).

If the judgment was given in proceedings commenced after exit day

The enforcement of UK judgments where proceedings were commenced after exit day will be governed by national law (namely PILA) only.

If enforcement of a UK judgment is not completed prior to exit day can the judgment creditor change enforcement regimes to ensure enforcement of the UK judgment

No, the regime depends only on which country the judgment was rendered (in this case the UK). If only the enforcement of a UK judgment is not completed prior to exit day, this means that the judgment was given prior to exit day. Therefore, in our view, the enforcement should continue to be governed by the Lugano Convention, where applicable.

Interviewed by Susan Ghaiwal.

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