

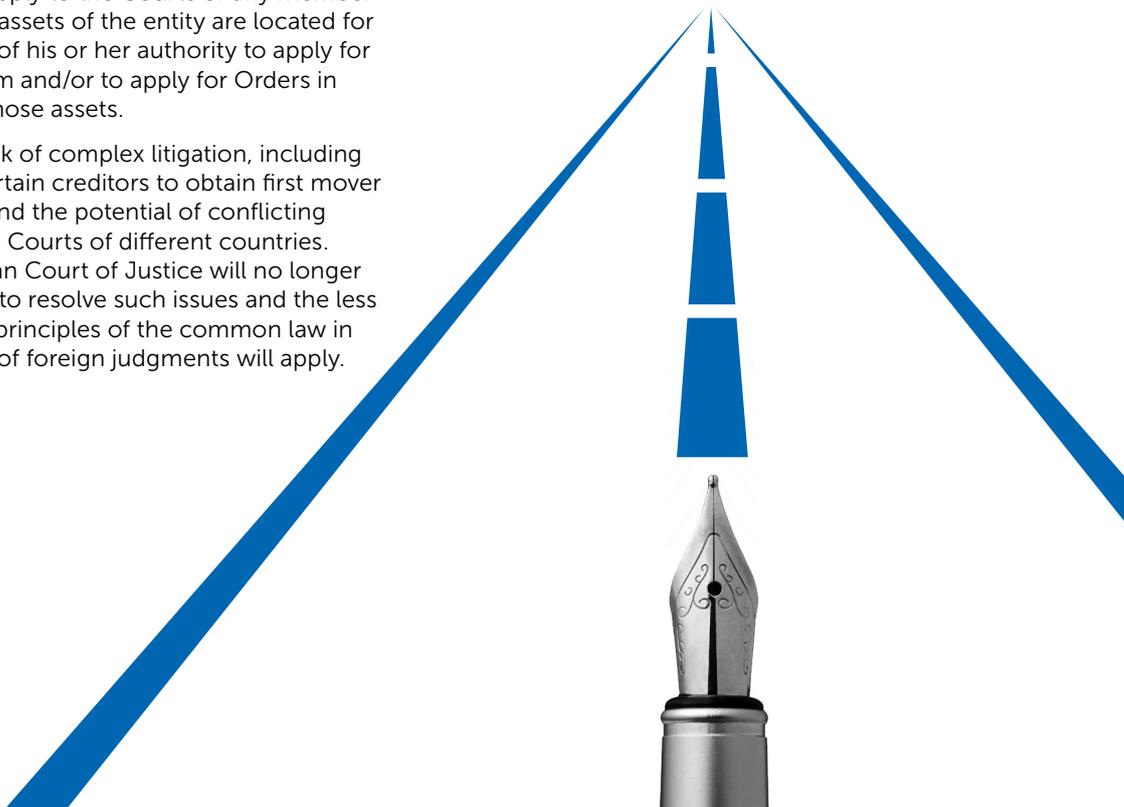
What lies ahead

Restructuring and insolvency post Brexit

There are a range of potential outcomes to the current Brexit negotiations. What would the impact on corporate recovery and insolvency be of a no-deal Brexit? It is important for all stakeholders, including businesses, lenders and investors to be aware of the difficulties that will arise in the event of a no-deal Brexit.

Key points if no-deal Brexit happens

- The Withdrawal Agreement will not come into effect and so all applicable EU legislation, including the Insolvency Regulation (which provides a seamless mechanism for mutual recognition and application of insolvency processes across the EU) and the Judgments Regulation will not automatically apply in the UK.
- There will be no automatic recognition of Irish (or other EU member state) insolvency proceedings in the UK. Separate Court applications will be necessary in the UK Courts. This will add to the costs and will lead to delay, thus reducing the recovery for creditors. The UK are signatories to the UNCITRAL Model Law on Cross-Border Insolvency which deals with recognition, but only four EU members have adopted this mechanism.
- Likewise, UK insolvencies, including schemes of arrangement will not benefit from the automatic recognition across EU member states that applies under the Insolvency Regulation. Again, UK insolvency professionals will have to engage lawyers to apply to the Courts of any member state where assets of the entity are located for recognition of his or her authority to apply for a moratorium and/or to apply for Orders in relation to those assets.
- There is a risk of complex litigation, including a race by certain creditors to obtain first mover advantage and the potential of conflicting outcomes in Courts of different countries. The European Court of Justice will no longer be available to resolve such issues and the less predictable principles of the common law in recognition of foreign judgments will apply.
- The Judgments Regulation will also no longer apply in relation to judgments of the Courts of the UK across other EU member states. Similarly, judgments from Irish or other EU Courts will no longer automatically be recognised and enforceable in the UK and separate Court applications will be required. This will have an impact on the efficiency and effectiveness of recovery actions and insolvency proceedings, including UK schemes of arrangement.
- Other EU countries, including Ireland, have strong insolvency regimes. This will enable effective and efficient cross-border recoveries and restructurings, enhancing outcomes for creditors, lenders and employees, facilitating turnaround and rescue of viable businesses and enhancing the availability of credit.



What steps should businesses be taking?

- If you are in dispute with a UK entity, you should consider issuing proceedings now, in anticipation of a potential no deal Brexit and the Judgments Regulation and associated EU laws no longer being available.
- Similarly, if you are considering commencing an insolvency based enforcement or restructuring, consider moving now before Brexit happens as the EU Regulations will continue to apply to processes commenced before Brexit.
- On a medium term basis, consider the benefits of establishing a corporate entity in Ireland to avail of a strong restructuring and enforcement regime that works seamlessly across the EU.
- Consider changing your key contracts to include Ireland as a Choice of Venue for disputes.

For further advice, please contact:



Norman Fitzgerald

Partner, Dispute Resolution & Litigation

+353 1 6644 239

normanfitzgerald@eversheds-sutherland.ie



Neil O'Mahony

Partner, Dispute Resolution & Litigation

+353 1 6644 292

neilomahony@eversheds-sutherland.ie



Matthew Howse

Partner, Dispute Resolution & Litigation

+44 28 9568 0139

matthewhowse@eversheds-sutherland.ie

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