



**AN BILLE UM DHLÍNSE CÚIRTEANNA AGUS
FORGHNÍOMHÚ BREITHIÚNAS (LEASÚ), 2011
JURISDICTION OF COURTS AND ENFORCEMENT OF
JUDGMENTS (AMENDMENT) BILL 2011**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

1. The purpose of the Bill is to give effect to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters signed at Lugano on 30 October 2007. This Convention supersedes the 1988 Convention of the same name which involves the Member States of the EU and the European Free Trade Association (EFTA) countries of Iceland, Norway and Switzerland. It was concluded on behalf of the European Community on foot of a Council Decision which was adopted in November 2008. In essence, it ensures that the same regime will apply for the recognition and enforcement of judgments coming from these EFTA countries as at present prevails within the European Union (EU) for judgments coming from the Member States. The governing instrument within the EU is Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation) and the new Lugano Convention replicates that instrument in all essential elements.

Provisions of the Bill

Amendment of Jurisdiction of Courts and Enforcement of Judgments Act 1998

2. *Section 1* inserts a new Part IIIA into the Jurisdiction of Courts and Enforcement of Judgments Act 1998 which contains the provisions necessary to give effect to the Lugano Convention of 2007. It also inserts the text of that Convention as a Schedule to the 1998 Act. The new Part IIIA contains the following Sections:
 - (a) *Section 20A* contains standard interpretation provisions.
 - (b) *Section 20B* states that the Convention has force of law in the State.
 - (c) *Section 20C* provides that judicial notice shall be taken of the Convention and of the explanatory report on it prepared by Professor Fausto Pocar, and of relevant court decisions which relate, for example, to the 1988 Lugano Convention and to the Brussels I Regulation; thus the courts are considered to know of these matters without the requirement to have them proven in evidence.

- (d) *Section 20D* authorises the Minister for Foreign Affairs to make certain orders in relation to Convention matters, most notably that a specified state is a state bound by the Convention or that particular declarations or communications have been made. While such orders are in force, they will be of evidential value.
- (e) *Section 20E* provides that an application under the Convention for the recognition and enforcement in the State of a judgment shall be made to the Master of the High Court. Under *subsection (4)* the Master may make an order for the recognition or enforcement of only part of a judgment.
- (f) *Section 20F* concerns the enforcement of judgments. Except in those circumstances set out in *subsections (3) and (6)*, such judgments do not include maintenance orders. *Subsection (1)* provides that a judgment other than a maintenance order in respect of which an enforcement order has been made shall be of the same force and effect as a judgment of the High Court and that proceedings for its enforcement may be taken accordingly. The subsection is subject to *section 20H* (interest on judgments and payment of costs) and to Article 47(3) of the Convention (restriction on enforcement measures while an appeal is pending). Under *subsection (3)*, the Master of the High Court may declare, on application by the maintenance creditor, that arrears of periodic payments and lump sum orders are to be enforced by the High Court rather than, as would be usual in the case of maintenance orders, the District Court. Such a declaration shall only be made if it is considered that it would result in a more effective enforcement of the sums in question (*subsection (4)*). *Subsection (6)* is a technical provision making a maintenance order enforceable by the High Court where the District Court does not have jurisdiction to enforce it under *section 20G* (Enforcement of enforceable maintenance orders).
- (g)(i) *Section 20G* deals with the enforcement of maintenance orders by the District Court. As is the case with judgments under *section 20F*, an order for enforcement must have been made by the Master of the High Court and the section is subject to *section 20H* of the Bill and to Article 47(3) of the Convention. *Subsection (2)* deems an enforceable maintenance order, for certain named purposes, to be an order made by the District Court under section 5 (maintenance orders for children born within marriage), section 5A (maintenance orders for children born outside marriage) or section 21A (lump sum payments) of the Family Law (Maintenance of Spouses and Children) Act 1976, as may be appropriate. These purposes relate to the enforcement of the enforceable maintenance order itself, section 98(1) of the Defence Act 1954 (deductions from the pay of a member of the Permanent Defence Force in respect of certain court orders) and, subject to the Convention, the variation or discharge of a maintenance order under section 6 of the 1976 Act (i.e., in a case where under the Convention the courts of the State would have jurisdiction to entertain an application for such variation or revocation).
- (g)(ii) *Subsections (1) and (2)* apply though the amounts which may be awarded thereunder exceed normal District

Court jurisdiction limits (*subsection (3)*). *Subsections (4) and (5)* deal with cases where enforceable maintenance orders are varied or revoked, as the case may be, in a state bound by the Convention.

- (g)(iii) *Subsection (6)* covers arrears in respect of periodic payment orders and lump sum orders which are to be enforced by the District Court unless the Master has declared under *section 20F* that they should be enforced through the High Court. *Subsection (7)* is a jurisdictional provision while *subsection (8)* concerns payment arrangements via the relevant district court clerk. *Subsection (9)* provides that where a maintenance debtor defaults in making payments, the district court clerk shall initiate enforcement proceedings, if requested in writing by the creditor under section 8 of the Enforcement of Court Orders Act 1940 or section 10 (relates to attachment of earnings) of the Family Law (Maintenance of Spouses and Children) Act 1976. The remaining provisions of this section are essentially procedural.
- (h) *Section 20H* deals with provisions in enforcement orders for the payment of interest on judgments and for the payment of costs.
- (i) *Section 20I* provides for fixing the currency and rate of exchange which should apply in the case of enforceable maintenance orders. Sums required to be paid shall be paid in the currency of the State and, if the amount stated in the maintenance order is other than in the currency of the State, it shall be converted into the currency of the State on the basis of the exchange rate prevailing on the date of the making of the enforcement order. A certificate signed by an officer of an “authorised institution” (defined in *subsection (4)*), stating the prevailing exchange rate on a specified date, shall be evidence of the facts therein contained.
- (j) *Section 20J* deals with the proof and admissibility of certain judgments and related documents and translations. *Subsection (1)* provides that a document, duly authenticated and purporting to be a copy of a judgment given in a court of a state bound by the Convention, shall be deemed to be a true copy of the judgment, unless the contrary is shown. *Subsection (2)* sets out the circumstances in which a judgment given in a state bound by the Convention is to be regarded as being duly authenticated while *subsection (3)* deals with the admissibility of translations.
- (k) *Section 20K* deals with the granting by the High Court of provisional including protective measures. Most commonly such measures would be in the form of an injunction to restrain a defendant from transferring assets out of the jurisdiction so that they would be available to satisfy any resulting judgment of the court seised of the substantive proceedings.
- (l) *Section 20L* deals with domicile for the purposes of the Convention. Domicile is the connecting factor used in the Convention to link a person with a state for the purposes of grounding jurisdiction and, for this purpose, is treated as being equivalent to ordinary residence. (Article 60 of the Convention deals with the domicile of legal persons and, in

tandem with *paragraph (c)* of this section, with the domicile of a trust).

- (m) *Section 20M* sets out the venue at which certain Convention proceedings may be brought insofar as the Circuit and District Courts are concerned. Certain Articles of the Convention, for example Article 2 and Article 9(1)(a), give a general jurisdiction to the courts of the State where the defendant is domiciled, and *subsection (1)* and *(2)* provide that jurisdiction of the Circuit Court in this context will be determined by reference to the place where the defendant or one of the defendants ordinarily resides or carries out any profession, business or occupation. *Subsection (3)* makes the necessary provision for the purposes of Article 9(1)(b) (actions brought by an insurance policyholder, insured or beneficiary) and Article 16(1) (consumer contracts where the proceedings are brought by a consumer). Under those Articles, jurisdiction is conferred on the courts of the state where the policy holder or consumer, as appropriate, is domiciled.
- (n) *Section 20N* specifies that Part III of the 1998 Act (which covers the 1988 Lugano Convention) shall, except as provided in Article 65, cease to apply between the State and a state bound by the Convention.

Amendment of Maintenance Act 1994

3. *Section 2* of the Bill provides for various technical amendments to the Maintenance Act 1994 which are required to accommodate the new Convention.

Short title, collective citation and construction

4. *Section 3* contains the short title and collective citation of the Bill.
5. The *Tenth Schedule* contains the text of the Lugano Convention of 2007.

Financial and Staffing Implications

6. There are no financial or staffing implications.

*Department of Justice and Law Reform,
February, 2011.*