



# The Hague Judgments Convention 2019

## TRANSFORMING CROSS-BORDER ENFORCEMENT



EFFECTIVE IRISH WORKAROUNDS FOR  
THE RULE IN GIBBS?



# MAJOR DEVELOPMENTS FOR CROSS-BORDER LITIGATORS AND RESTRUCTURING PROFESSIONALS:

Irish and EU civil judgments are now enforceable in the UK, following the entry into force of the Hague Judgments Convention 2019 between the EU and the UK. This change is poised to reshape the landscape for cross-border litigation, especially in restructuring and insolvency.



# BUT WHAT ABOUT THE 'INSOLVENCY' EXCLUSION?

It's true that the Convention expressly excludes *"insolvency, composition, resolution of financial institutions, and analogous matters."*

This means English Restructuring Plans are almost certainly outside the Convention's scope, so they remain unenforceable in the Ireland the EU and other Convention states under the HJC, except via common law. However, the analysis doesn't end there.



# COULD IRISH / EU CLAIMS BE ENFORCED IN ENGLAND DESPITE AN ENGLISH RESTRUCTURING PLAN?

Suppose a creditor's claim, governed by Irish law, is purportedly released by an English Restructuring Plan using a third-party release mechanism. That creditor may be able to pursue their rights in Ireland or another EU Member State **as a civil or commercial matter** if their claim is still ripe.

If they obtain a judgment and sought to enforce it under the HJC, the UK would, in principle, be **obliged to recognise and enforce that judgment** (without looking at the merits of the judgment or considering the effects of the Restructuring Plan on that claim)—unless one of the Convention's specific exceptions applies (such as fraud or manifest incompatibility with UK public policy).





# IRELAND'S UNIQUE POSITION: A WAY AROUND THE RULE IN GIBBS?



Irish Part 9 Schemes of Arrangement are considered civil judgments and should not fall within the Convention's insolvency exclusion. This means the UK may be required to recognise and enforce Irish Part 9 scheme sanction orders, even if they conflict with the "rule in Gibbs," which holds that English law debts cannot be discharged by foreign proceedings unless the creditor submits to the jurisdiction. Moreover, Irish Examinerships, based on the judgments in *Silver Pail* and *Business City Express*, have also navigated around the rule in Gibbs.



THIS UNIQUE FEATURE OF IRISH LAW  
—UNMATCHED IN THE EU—  
COULD ALLOW BOTH PART 9  
SCHEMES AND EXAMINERSHIP TO  
ACHIEVE RECOGNITION AND  
ENFORCEMENT IN THE UK,  
BYPASSING GIBBS.

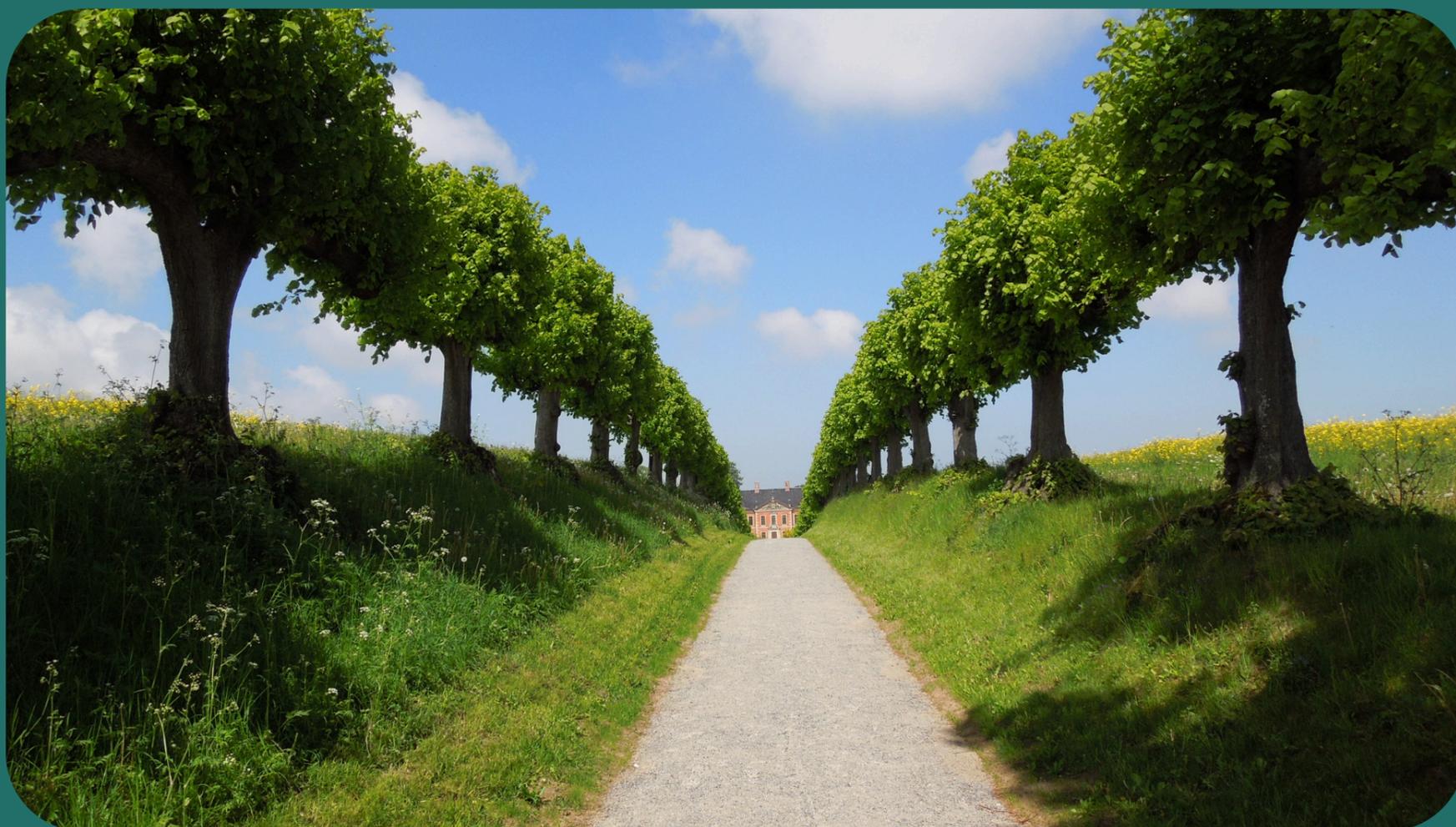


# DO WE STILL NEED PARALLEL PROCEEDINGS?

With Ireland's ability to circumvent the rule in Gibbs, a fundamental question arises: If Irish procedures can achieve recognition and enforcement in the UK without parallel English proceedings, is there still a need for such processes? This could significantly shift cross-border restructuring strategy, reducing costs and complexity for companies and creditors alike.



# THE BOTTOM LINE



The Hague Judgments Convention opens new avenues for cross-border enforcement in restructuring. If you're considering a cross-border restructuring or want to understand how these changes could impact your approach, let's connect to discuss the implications for your business and strategy.

