

Hague 2019 and recognition and enforcement of foreign judgments – a welcome step in the right direction

UK Government confirms entry into Hague 2019

On 23 November 2023 it was confirmed that the UK government will sign the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“**Hague 2019**”). The decision paves the way to the implementation of an effective and uniform approach for the mutual recognition and enforcement of judgments between the UK and other contracting states, including EU member states (other than Denmark), Ukraine and Uruguay. The United States, Israel and Russia are also expected shortly to ratify Hague 2019 (having already signed it), thereby not only increasing the global reach and overall effectiveness of Hague 2019 but which is likely to encourage the list of contracting states to further grow.

The decision follows the UK government’s Response to Consultation and round-table discussions with stakeholders across the legal sector and academia that sought views on plans for the UK to become a contracting state to Hague 2019 by ratifying the convention and implementing it into domestic law. The consultation process confirmed unequivocal support for the entry into Hague 2019, with participants considering the potential benefits of joining the Convention to outweigh any downsides.

It is anticipated that Hague 2019 will, according to intergovernmental organisation the HCCH “*increase certainty and predictability, promote the better management of transaction and litigation*

risks, and shorten timeframes for the recognition and enforcement of a judgment in other jurisdictions, providing better, more effective, and cheaper justice for individuals and businesses alike”.

Hague 2019 will enter into force in the UK 12 months after ratification (therefore at the earliest around early 2025) and will apply to the enforcement of judgments between the UK and any other contracting state in respect of proceedings issued after that date (provided also that it has been 12 months post ratification for the other contracting state). In respect to each new contracting state that joins Hague 2019, it will apply in each case to proceedings issued 12 months after ratification by the new contracting state.

Scope of Hague 2019

Hague 2019 requires contracting parties to recognise and enforce civil and commercial judgments given by a court of a contracting state (i.e. the state of origin) in another contracting state (i.e. the requested state) and without there being any review of the merits of the judgment in the requested state. Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the state of origin or if the time limit for seeking ordinary review has not yet expired, but this will not prevent a subsequent application for recognition or enforcement.

Hague 2019 applies equally in respect of judgments where one of the parties to the proceedings is a state, including a government or a government agency of a contracting state, subject to usual principles of state immunity.

The bases for recognition under Hague 2019 are provided in Article 5, and include:

- that the person against whom recognition and enforcement is sought was habitually resident in the state of origin or had their principal place of business in the state of origin at the time that person became a party to the proceedings in the court of origin;
- the defendant maintained a branch, agency or other establishment without separate legal personality in the state of origin at the time that person became a party to the proceedings in the court of origin and the claim on which the judgment is based arose out of the activities of that branch, agency or establishment;
- the defendant expressly consented to jurisdiction of the court of origin or argued on the merits before the court of origin without contesting jurisdiction;
- the judgment ruled on contractual obligation and it was given by a court of the state in which performance of that obligation took place or should have taken place;
- with various respective limitations, the judgment ruled on a counterclaim, a tort or the validity, construction, effects, administration or variation of a trust, or in matters relating to a consumer or employment contract; and

- the judgment was given by a court designated in an agreement, other than an exclusive choice of court agreement.

The last bases listed above remedies a perceived gap under the Hague 2005 Convention on Choice of Court Agreements (“**Hague 2005**”), which applies only in respect of judgments arising from a court specified in an exclusive choice of court agreement between parties. An “exclusive choice of court agreement” under Hague 2019 means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one state to the exclusion of the jurisdiction of any other courts. Hague 2019 provides for recognition and enforcement of judgments deriving from asymmetric and non-exclusive choice of court agreements. This is of particular significance to financial services agreements, where it is common for parties to agree asymmetric jurisdiction clauses which will now be caught within the scope of Hague 2019 and which it is anticipated may as a result increase the attractiveness of the UK financial services industry.

Matters falling outside the scope of Hague 2019 include judgments relating to insolvency, defamation, intellectual property, privacy and various family law matters. It also does not apply to arbitral awards.



What steps will be required to recognise a judgment of a court of origin in the UK?

The UK Government intends that judgments of a court of origin under Hague 2019 be implemented in the UK using a ‘registration model’. What this means is that foreign judgment creditors will not be able to proceed directly to the enforcement stage in the UK as if the foreign judgment was a domestic one. Rather, much like the process under Hague 2005, the Response to Consultation suggests that the UK government will implement

legislation requiring foreign judgment creditors to submit an application to the court, setting out the applicable indirect jurisdiction ground and provide the necessary evidence. Parties objecting to the recognition and enforcement of the foreign judgment would then have an opportunity to challenge the registration before enforcement takes place, by way of appeal against or setting aside of the registration.



Next steps

The UK Government intends to sign Hague 2019 as soon as possible and must then proceed to ratification before it can come into effect. At the time of depositing the instrument of ratification, the UK will be able to choose whether or not it wants to opt out of Hague 2019 applying between it and any particular contracting state. Current contracting states will equally be afforded a 12-month period to opt-out of Hague 2019 applying between it and the UK.



Conclusion

Hague 2019 will increase certainty and predictability and provide a clearer, more efficient, effective and cost-effective framework for the recognition and enforcement of UK judgments abroad (and foreign judgments in the UK). This is of particular significance where, post-Brexit, the UK no longer benefits from the mutual recognition and enforcement arrangements under the recast Brussels Regulation and Lugano Convention (and where the EU is not currently amenable to the UK's joining of the Lugano Convention).



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