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WHAT THE UK'S RATIFICATION OF THE 2019 HAGUE CONVENTION MEANS FOR CROSS-BORDER ENFORCEMENT

On 27 June 2024 the United Kingdom ratified the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the 2019 Hague Convention), this change will bring practical benefits to parties seeking to enforce against those with assets in, for example, the EU and will give additional comfort to those negotiating English jurisdiction clauses in their contracts.

What is the 2019 Hague Convention?

The 2019 Hague Convention sets a framework for the mutual recognition and enforcement of foreign civil or commercial judgments between contracting states. Effectively it fills a gap left by the UK leaving the EU.

Where does it apply?

The 2019 Hague Convention is currently in force between the EU (excluding Denmark) and the Ukraine.

The Convention has also been ratified in Uruguay where it will come into force in 1 October 2024. In addition, Costa Rica, Israel, Russia, the United States, Montenegro, and North Macedonia have signed the 2019 Hague Convention but have not yet ratified it.

When will it come into force in England?

The 2019 Hague Convention will come into force in England on 1 July 2025 and will apply to proceedings commenced on or after that date i.e. it is not retrospective or linked to the date of the judgment.

Application and Scope

Under the terms of the 2019 Hague Convention, a judgment made by a court of a contracting state (a **State of Origin**) must be recognised and enforced in another contracting state (a **Requested State**) provided it is eligible and none of the exclusions or grounds for refusal apply. Significantly, a Requested State is not permitted to review the merits of the foreign judgment¹, which importantly prevents parties using the procedure to reverse decisions of the State of Origin.

The 2019 Hague Convention excludes judgments arising from a number of circumstances, including:

1. judgments covered by more specialised conventions, such as those concerned with the carriage of passengers and goods; and matters which are treated inconsistently between jurisdictions, for example judgments arising from insolvency proceedings.
2. arbitrations or related proceedings, which are instead covered by the New York Convention 1958; and
3. interim measures, as these do not fall within the definition of "judgment".

A judgment will be eligible for enforcement under the 2019 Hague Convention if any of one of 13 criteria² are met, these include:

¹ Article 4(2)

² Article 5

1. where a person against whom recognition is sought is habitually resident or has their place of business in the State of Origin;
2. the defendant expressly consented to the jurisdiction of the court of origin;
3. judgments on a contractual obligation where the judgment was given by a court of the state in which performance of that obligation took place, or where the parties agreed to submit to the courts of that jurisdiction ; and
4. judgments on a non-contractual obligation where the act or omission causing the loss occurred in the State of Origin, irrespective of where the harm occurred.

A key differentiator to the 2005 Hague Convention on Choice of Court Agreements to which the UK is a party, is that that only applies where there is an *exclusive* jurisdiction clause in favour of a signatory country. The 2019 Hague Convention is broader in that it applies to contracts with a *non-exclusive* jurisdiction clause³. This is a point that those drafting dispute resolution clauses will wish to have in mind.

Can States refuse to enforce the judgment?

Provided judgments fall within the scope of the 2019 Hague Convention, recognition and enforcement can only be refused on certain grounds. The grounds for refusal are non-mandatory and are exercised at the court's discretion. The grounds for refusal include, refusal where:

1. the judgment is manifestly incompatible with public policy of the Requested State;
2. the judgment is inconsistent with a judgment given by the Requested State in a dispute involving the same parties; or
3. where there is a close connection between the dispute and the Requested State.

Comment

Once in force, the 2019 Hague Convention will provide greater certainty that judgments given by the English courts will be recognised and enforced in other signatory jurisdictions, and will importantly impact England/EU disputes and enforcement. In so doing, it will be a step towards remedying the gap created when the UK left the EU, and will again easily enable successful parties to enforce English judgments in EU Member States and vice versa, thus reducing the time, costs, and risks associated with enforcing these judgments.

Parties contemplating cross-border proceedings in the English courts may wish to consider delaying commencing proceedings until after 1 July 2025, if there is a likelihood they would need to enforce in a 2019 Hague Convention jurisdiction (but will also wish to satisfy themselves that this will not cause issues relating to limitation periods).

The introduction of the 2019 Hague Convention will encourage businesses to continue to incorporate English jurisdiction clauses in their contracts and for parties to choose to resolve their disputes in the English courts.

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³Article 5.1(m)