



## **UK Government ratifies Hague Judgments Convention 2019: multilateral treaty on enforcing judgments**

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The UK Government has ratified a new multilateral treaty on the enforcement of judgments: the Hague Judgments Convention 2019 (the “Convention”). The Convention will take effect in the UK from 1 July 2025 and will apply to any judgment of the Courts of England & Wales<sup>1</sup> given in civil and commercial proceedings<sup>2</sup> issued after that date. This means that if a party issues a claim in the Courts of England & Wales after 1 July 2025 under an agreement that contains a non-exclusive or asymmetric jurisdiction clause then the judgment will be enforceable subject to the terms of the Convention. The Convention will apply to all agreements irrespective of whether the agreements were entered into before 1 July 2025, provided that the claim to enforce the terms of the agreement was commenced in the Courts of England & Wales after 1 July 2025.

This will be a significant boost for the Courts of England & Wales and significantly mitigates the consequences of Brexit for cross-border enforcement of UK judgments.

The other Contracting States to the Convention are currently the EU Member States (except Denmark), Ukraine and Uruguay. Those Contracting States have the power to “opt out” of the Convention in respect of a new Contracting State but, in the absence of the exercise of that opt-out, the Convention will facilitate the cross-border enforcement of a wide range of civil and commercial judgments of the Courts of England & Wales by the courts of EU Member States (except Denmark), Ukraine and Uruguay and vice versa.

The ratification of the Convention will provide particular comfort to finance parties involved in cross-border transactions:

- Finance parties have traditionally relied upon asymmetric jurisdictional clauses (i.e. a clause where the borrower must sue in the courts of a particular jurisdiction, but the finance parties have the freedom to sue in any competent jurisdiction). These clauses are included as an option in many industry standard documents including those published by the LMA.
- Following the UK’s withdrawal from the EU, the enforcement of a UK judgment issued pursuant to an asymmetric jurisdiction clause could no longer occur under the Recast Brussels Regulation<sup>3</sup>. Nor could a judgment rendered pursuant to an asymmetric jurisdiction clause be enforced under the Hague Convention on Choice of Court Agreements 2005, which only applies where the contracting parties have entered into an exclusive choice of court agreement (i.e. one where both parties have agreed to sue in the courts of a particular jurisdiction).

- Although many countries have developed domestic procedures which facilitate the enforcement of foreign judgments (irrespective of the terms of any underlying contract), uncertainty regarding enforcement of judgments of the Courts of England & Wales in the EU may have led finance parties, in certain contexts, to consider moving away from asymmetric jurisdiction clauses in favour of exclusive jurisdiction clauses or arbitration (as awards from arbitrations seated in the UK are enforceable in EU Member States under the New York Convention<sup>4</sup>).
- However, the newly-ratified Convention explicitly applies to judgments issued pursuant to asymmetric jurisdiction clauses. The UK's ratification of the Convention therefore provides finance parties comfort<sup>5</sup> that they will be able to enforce a judgment of the Courts of England & Wales (for instance) in the EU and vice versa.

## Commentary

Ultimately, the UK's ratification of the Hague Judgments Convention 2019 is good for business, good for litigants and good for the UK. It will reduce transaction costs by affording greater certainty to contracting parties that any judgments obtained in the Courts of England & Wales will be able to be enforced through the mechanism provided for under the Convention without a merits review and that Court judgments of EU Member States and other Convention parties will also be able to be enforced in England & Wales under the mechanism set out in the Convention.

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## References

**1** Scotland and Northern Ireland have been exempted from the UK's ratification of the Convention.

**2** The Convention applies to civil and commercial matters. Certain matters are outside the scope of the Convention, including insolvency, certain antitrust matters, privacy and IP and company validity.

**3** Subject to certain transitional provisions.

**4** The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

**5** There remains a degree of uncertainty as to the overarching enforceability of asymmetric jurisdiction clauses. The French Courts have been particularly averse to such clauses. Finance parties should therefore continue to be vigilant and apprised of any enforcement risks that arise on a particular transaction.