

## UK TO JOIN THE HAGUE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL OR COMMERCIAL MATTERS

On 12 January 2024, the UK signed the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The UK will now take the internal steps necessary to ratify the Convention, which will come into force 12 months after ratification. The Convention provides for the mutual enforcement of judgments between the UK and the other contracting states, including EU member states, in proceedings started after the Convention comes into force for the UK.

### The Hague 2019 convention

The Convention (“**Hague 2019**”) provides “a much-needed and long-awaited piece of the ‘puzzle’ that is cross-border dispute resolution”, according to the Secretary General of the Hague Conference on Private International Law. The aim of Hague 2019 is to promote access to justice and to enhance trade, investment and mobility by facilitating the cross-border recognition and enforcement of judgments.

Unlike, for example, the EU’s Brussels I Regulation, Hague 2019 does not lay down jurisdictional rules with which courts in contracting states must comply. Instead, Hague 2019 provides that a judgment will only be enforceable under Hague 2019 if the court giving judgment (the court of origin) had jurisdiction on one of the bases set out in Hague 2019. A court in a contracting state can still take jurisdiction over a dispute on a basis outside Hague 2019, but any resulting judgment will not then be enforceable under Hague 2019.

The bases of jurisdiction set out in Hague 2019 are similar in some respects to the jurisdictional provisions in Brussels I. They include, for example, the defendant being habitually resident in the court of origin, the claim arising from the activities of a branch or agency in the jurisdiction of the court of origin, the claim arising from contractual performance that took place, or should have taken place, in the jurisdiction of the court of origin (unless the activities of the defendant in relation to the transaction clearly did not constitute a purposeful and substantial connection to that state), and the agreement of the defendant to the non-exclusive jurisdiction of the court in question.

Hague 2019 sets out limited grounds on which enforcement of a judgment can be refused by a court in a contracting state (the requested court). These include, for example, the proceedings being contrary to an agreement to the jurisdiction of another court, the judgment being inconsistent with a judgment between the same parties in

### Key benefits of joining Hague 2019

- Aims generally to promote access to justice and to enhance trade, investment and mobility between participating states.
- Will provide greater certainty as to the efficient enforcement of judgments between the UK and EU member states post-Brexit.
- Will cover judgments deriving from both asymmetric and non-exclusive choice of court agreements.

the requested state, and there being proceedings between the same parties on the same subject matter in the requested state provided that the proceedings in the requested state were started before those in the court of origin and there is a close connection between the dispute and the requested state.

Courts in a requested state are obliged to act “expeditiously” when enforcing a judgment.

Hague 2019 is already in force in all EU member states, except Denmark. The Convention is also in force in Ukraine, and will come into force for Uruguay on 1 October 2024. In addition, Costa Rica, Israel, Montenegro, North Macedonia, Russia and the US have all signed, but not yet ratified, the Convention. When a new state ratifies the Convention, each existing party has 12 months in which it can refuse to allow the Convention to come into force between it and the ratifying state.

### **Consequence of the UK's joining Hague 2019**

With all due respect to Ukraine and Uruguay, it is the EU's participation in Hague 2019 that is significant for the UK. Hague 2019, together with the Hague Conference's complementary convention on choice of court agreements (“**Hague 2005**”), will provide in many cases an effective means to enforce judgments across the participating states.

Hague 2005 is already in force in the UK and the EU, and provides for the enforcement of a judgment given by a court specified in an exclusive jurisdiction clause. Hague 2005 also provides that courts other than the one chosen must not take jurisdiction over a dispute that falls within the exclusive jurisdiction agreement. Asymmetric and non-exclusive jurisdiction clauses are outside the scope of Hague 2005, but they fall within Hague 2019 because they provide sufficient agreement to the jurisdiction of the chosen court.

Further, while Hague 2005 only applies to exclusive jurisdiction agreements entered into after that Convention came into force in the chosen state, Hague 2019 applies to judgments given in proceedings that were initiated after the Convention came into effect between the state of origin and the requested state regardless of when the agreement was made.

The UK Government hopes that joining Hague 2019 will enhance the UK's status as a forum for dispute resolution by providing greater legal certainty that judgments from the courts in the UK will be recognised and enforced in other states worldwide, and vice versa. In particular, with the EU as a member, the two Conventions plug most of the issues that were raised after Brexit about the enforcement of English judgments in EU member states and vice versa.

## **Next Steps**

The UK Government will now put in place the necessary secondary legislation so that the UK can ratify Hague 2019. This includes giving effect to Hague 2019 in UK domestic law, and amending court rules to provide for the enforcement of foreign judgments in accordance with Hague 2019. Hague 2019 will enter into force 12 months after ratification and will apply to judgments given in proceedings that were commenced after that date.

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