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Publishing Staff

Publisher: David Nayer

Production Editor: Sharon D. Ray

Cover Art Design: Morgan Morrisette Wright and Sharon D. Ray

The photo on this journal's cover is by Gaël Gaborel—A Picture of the Earth on a Wall—on Unsplash

Cite this publication as:

The Global Regulatory Developments Journal (Fastcase)

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A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

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David Nayer, Publisher, Full Court Press at david.nayer@vlex.com or at
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ISSN 2995-7486

Hague Judgments Convention 2019 Is in Force in the United Kingdom. That Is Good News for Commercial Parties

Sarah Garvey, Stephen Moi, and Selin Gunsur*

In this article, the authors discuss the Hague Judgments Convention of 2 July 2019, which has now entered into force in the United Kingdom.

On 1 July 2025, the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019) entered into force in the United Kingdom. Hague 2019 is a multilateral treaty, currently ratified by the EU, Ukraine, Uruguay, Albania, and Montenegro (Contracting States), concerning the cross border recognition and enforcement of judgments issued by the courts of Contracting States in civil and commercial matters in the courts of other Contracting States. This marks a significant moment in the UK and European Union's post-Brexit private international law landscape.

Happily, the entry into force of Hague 2019 in the UK should simplify the process of getting a wide range of English judgments recognised and enforced in the courts of EU Member States, as well as the courts of other Contracting States. Although the recognition and enforcement of foreign judgments as between UK and EU member state courts in civil or commercial matters arising from an exclusive choice of court agreement was already governed by a separate multilateral treaty—Hague 2005—and remains unaffected by Hague 2019, by establishing greater uniformity and predictability on enforcement, Hague 2019 should help further reduce costs and save time in cross border transactions and in litigation.

Brexit Backdrop

Following the end of the Brexit transition period on 31 December 2020, the EU regime that provides rules on jurisdiction and

enforcement in civil and commercial matters (Brussels Recast Regulation) ceased to apply to English judgments (save in legacy cases) and was no longer applied by the UK courts (again, save in legacy cases). A similar regime covering Switzerland, Iceland, Norway, and the EU (Lugano Convention) also ceased to apply to English judgments (save in legacy cases) at that time.

These changes triggered an intense and long running debate amongst commercial parties and their lawyers about whether the increased uncertainty (and costs and time) involved in getting English judgments enforced through the EU courts under applicable national laws meant that parties should move away from selecting English courts in commercial contracts and select another forum (e.g., an EU Member State court or arbitration). Indeed, in some jurisdictions, there was debate about whether an English judgment would be recognised at all without a treaty basis. Many hours were also spent debating whether decades-old bilateral enforcement treaties had been revived and were, once again, applicable.

Hague 2005

The UK government sought to get ahead of this debate. At the end of the Brexit transition period, it immediately re-joined the Hague Convention on Choice of Court Agreements 2005 (Hague 2005) to which the EU was a party. This move was welcomed by commercial parties as it went some way to alleviate concerns about the enforceability of English judgments in the courts of EU Member States. However, Hague 2005 only covered exclusive jurisdiction clauses and the enforcement of resulting judgments issued pursuant to such clauses.

Anecdotal evidence suggests that a notable number of commercial parties adapted their approach to contractual disputes provisions to include an exclusive English jurisdiction clause (as opposed to an asymmetric clause or a non-exclusive clause which are widely considered to be outside the scope of Hague 2005) so as to bring themselves within the ambit of the Hague 2005 regime.

The question of the enforceability of English judgments issued pursuant to asymmetric or non-exclusive clauses in EU Member State courts has remained a topic of debate. Commercial parties have had to continue to consider applicable national law rules in relation to the enforcement of English judgments issued pursuant

to such clauses, which has increased time and costs on transactions and in litigation.

More recently, commercial parties have also had to digest the decision of the Court of Justice of the European Union in *Lastre*, which considered such clauses from an EU law perspective.

Overview of Key Provisions in Hague 2019

In summary, Hague 2019 creates an obligation on the courts of Contracting States to recognise and, if applied for, enforce an “in scope” judgment issued by the courts of another Contracting State (state of origin), provided that certain conditions are satisfied, subject to certain exceptions.

A judgment must fall within Hague 2019’s material scope. There are some significant exceptions including intellectual property matters, insolvency, arbitration, privacy, and certain antitrust matters.

Judgments are defined as “any decision on the merits given by a court whatever that decision may be called . . .” and can include both money and non-money judgments, orders for costs (provided they relate to a determination on the merits) but not interim measures (“an interim measure of protection is not a judgment”).

A judgment must be “eligible,” and eligibility is assessed by reference to the jurisdictional bases listed in Article 5. Those bases link either the defendant to the state of origin (for example, through habitual residence, principal place of business, or branch establishment) or the dispute itself to that state (for example, place of performance of a contractual obligation, place where the harmful event occurred, or location of immovable property).

Notably, Article 5(1)(m) recognises judgments founded on “a court designated in an agreement . . . other than an exclusive choice of court agreement.” In other words, judgments rendered pursuant to non-exclusive, asymmetric, or one-way jurisdiction clauses will qualify.

The court that is requested to recognise and enforce the foreign judgment may not, however, review the merits of the underlying dispute as per Article 4(2). For a foreign judgment to be recognised, none of the refusal grounds in Article 7 may apply. These defences track familiar private international law concepts: manifest incompatibility with public policy, fraud, fundamental defects in

service, inconsistency with another judgment, breach of a competing jurisdiction agreement, or pending review on appeal.

Once these requirements are met, Hague 2019 obliges the recognition and enforcement of the judgment through the same procedures that apply to domestic judgments in the Contracting State courts. In the UK, this is done by a registration process modelled on the existing regime for other treaty judgments under CPR Part 74.

Two temporal limitations should be noted:

1. Hague 2019 applies only if, when the original claim was issued, Hague 2019 was in force between the state of origin (the issuing court) and the enforcing Contracting State.
2. It also requires the judgment to be enforceable in the state of origin—so a satisfied, stayed or time-barred judgment cannot be exported.

Finally, Contracting States may make declarations limiting subject-matter coverage or refusing reciprocal relations with another State. The UK has not chosen to narrow its scope and has not invoked the non-reciprocity mechanism.

Hague 2019—Filling a Gap

Hague 2019 deals with the recognition and enforcement of judgments issued by the courts in Contracting States. Unlike Hague 2005, it does not directly provide for common jurisdictional rules to be applied by the courts of Contracting States (although, as noted above, it does set out jurisdictional bases for the court of origin at Article 5). Whereas Hague 2005 was restricted to the enforcement of judgments issued pursuant to exclusive jurisdiction clauses in favour of the Contracting State courts, Hague 2019 is complementary and covers a much wider range of judgments. Importantly, for commercial parties it includes judgments issued pursuant to non-exclusive and asymmetric jurisdiction clauses. Asymmetric clauses, which are not uncommon in finance documentation, including the LMA standard jurisdiction clause, typically require one party (often the borrower) to bring proceedings in a specified court, while allowing the other party (usually the lender) the flexibility to bring proceedings in any court of competent jurisdiction.

Hague 2019 also covers judgments where the jurisdiction of the issuing court in the Contracting State is not founded on a

jurisdiction clause at all. For example, it covers judgments issued by the English courts pursuant to a tort claim.¹

The Future of Cross Border Enforcement of Judgments?

For commercial parties, the key takeaway is that Hague 2019 will significantly enhance legal certainty concerning the enforceability of English judgments in the courts of the EU and other Contracting States. This will be particularly helpful where contracts contain non-exclusive or asymmetric jurisdiction clauses as there has been no clear treaty basis for enforcement of judgments issued pursuant to such clauses post Brexit.

It seems likely there will continue to be a focus on the treatment of asymmetric clauses, not least because of the ongoing debate in some markets about the implications of *Lastre*.

In the context of Hague 2019, it will be interesting to see whether enforcing courts will consider a judgment “eligible” where the court of origin has exercised jurisdiction and a finance party has chosen to sue in a forum other than the one designated in the jurisdiction clause. It is expected that any eligibility analysis will be guided by the jurisdictional criteria set out in Article 5 but there remains some scope for a divergence of approach.

Hague 2019 is relatively untested and it will be important to see whether it facilitates the cross fertilisation of jurisprudence between the courts of Contracting States. It will also be interesting to see if further jurisdictions join Hague 2019 in the near future and it becomes, as many hope, the litigation equivalent to the highly successful instrument for the enforcement of foreign arbitral awards, the New York Convention 1958. Currently the New York Convention has 172 signatory states. Hague 2019 has some way to go to achieve a similar scale of global coverage, but 1 July represents progress and is a positive step forward.

Notes

* The authors, attorneys with Mayer Brown, may be contacted at sgarvey@mayerbrown.com, sgunsur@mayerbrown.com, and smoi@mayerbrown.com, respectively.

1. Under English common law rules, jurisdiction over a foreign party may be founded under the tort gateway (a) where damage was or will be sustained within the jurisdiction, (b) where the damage which has or will be sustained results from an act committed or likely to be committed within the jurisdiction, or (c) where the claim is governed by English law (CPR 6B PD 3.1(9)).