

# CLYDE&Co

## Briefing note: 2019 Hague Convention on the Recognition and Enforcement of Judgments

What is it?	<ul style="list-style-type: none"> <li>The 2019 Convention is an international treaty to which nations state may subscribe</li> <li>It is a standalone treaty developed by the Hague Conference on Private International Law, known as <b>HCCH</b></li> <li>Once in force between signatory states it would allow for the straightforward recognition and enforcement of civil judgments in a different signatory state to the one in which they were delivered</li> </ul>
What is its status?	<ul style="list-style-type: none"> <li>The Hague Conference's mission is to develop and promote conventions in all areas of private international law (<a href="#">HCCH   Home</a>)</li> <li>HCCH is an inter-governmental organisation involving 90 states (including the UK) and one regional grouping, that being the European Union (<b>EU</b>)</li> <li>HCCH is completely independent of the EU and can be traced back to the late 19<sup>th</sup> century</li> <li>The text of 2019 Convention was settled that year, but in order to take effect it needs to be ratified by any state that proposes to adopt its provisions</li> </ul>
What does it involve and what does it replace?	<ul style="list-style-type: none"> <li>The Convention would allow for judgments in civil cases pursued in UK courts to be recognised and enforced in other states which have already ratified it; currently the EU 27 and Ukraine</li> <li>On leaving the EU, judgments given in UK courts in civil claims issued after EU exit are no longer subject to the recognition and enforcement regime of the Brussels I (recast) Regulation, making the recovery of a judgment debt from a foreign-based losing party potentially more difficult and involved than before</li> <li>Ratification of the Hague Convention would go some way to making that process more straightforward and secure</li> <li>The UK's exit from the EU also means that the parallel regime of the Lugano Convention (which applies to EFTA states - and, like Brussels I (recast) - also deals with jurisdiction in addition to recognition and enforcement) is no longer available</li> </ul>
What is not covered?	<ul style="list-style-type: none"> <li>The 2019 Hague Convention does not, and is not intended to, deal with the substantive applicable law governing any given civil dispute</li> <li>Nor does it address jurisdiction, ie in which country's courts the matter may be pursued</li> <li>Given that cross-border civil claims pursued in the UK are no longer subject to the codified rules on jurisdiction set out the Brussels I (recast) Regulation, careful reference should be made at or before the outset of proceedings to the specific rules in force in each of the three UK jurisdictions</li> <li>Certain types of civil claim are specifically excluded by the Convention, notably those involving - and this is not exhaustive list - matters such as defamation, the carriage of passengers or goods, liability for nuclear damage, intellectual property, and anti-trust / competition issues</li> <li>In addition, the Convention specifically provides <ul style="list-style-type: none"> <li>at article 3, that "An interim measure of protection is not a judgment", meaning that things such as applications for interim payments or for pre-action disclosure are very probably out of scope, i.e. would not qualify for recognition and enforcement under its terms</li> <li>at article 5, that for tort claims involving property damage or personal injury (including death), the breach of duty (act or omission) "directly causing such harm [must have] occurred in the state of origin [of the relevant judgment], irrespective of where that harm occurred", a requirement that appears likely to mean that judgments given in UK courts relating to accidents abroad would not qualify for recognition and enforcement under its terms</li> </ul> [Both these points should be regarded as provisional views given that the terms of the Convention have not yet been tested in court.] </li> <li>There is the possibility that the UK could elect to make a reservation (an exception) in respect of the Russian Federation</li> </ul>
How might this work with UK devolution?	<ul style="list-style-type: none"> <li>There are two aspects of note <ul style="list-style-type: none"> <li>first, the provisions in the Convention do not need to be applied as between different territorial units of a single state</li> <li>second, that the Ministry of Justice (<b>MoJ</b>) intends, with the agreement of the Scottish Government and the Northern Ireland Executive, to ratify the Convention for all three parts of the UK en bloc</li> </ul> </li> </ul>
Why is it topical?	<ul style="list-style-type: none"> <li>The MoJ is currently consulting about its plan to ratify and implement the 2019 Convention</li> <li>It is seeking responses by 9<sup>th</sup> February 2023: <a href="#">Consultation on the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters</a></li> </ul>
What do you need to do now?	<ul style="list-style-type: none"> <li>Review exposure to civil claims involving non-UK parties and, with legal panel/counsel, consider whether future recognition and enforcement procedures would be streamlined if the UK were to ratify the Hague Convention</li> <li>Make an appropriate submission to the MoJ before the consultation closes</li> </ul>
What are the next steps?	<ul style="list-style-type: none"> <li>The consultation closes on 9<sup>th</sup> February 2023</li> <li>The MoJ will publish a synthesis of responses towards the middle of the year</li> <li>If, as looks likely, the UK does ratify the Convention, a prescribed period of 12 months must elapse before it takes effect</li> <li>It follows that the Convention is unlikely to be in force in the UK much before Q2 or Q3 2024</li> <li>Note that no indication has been given as to the transitional provisions that might accompany ratification</li> </ul>