

Adoption of The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters



On 2 July 2019, The Hague Conference on Private International Law which includes the European Union, adopted the [Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#) (the *Convention*).

The Convention's objective is to facilitate the recognition and enforcement of court judgments across jurisdictions by creating a single global framework to that end. This should, in turn, enhance legal certainty and predictability, help to reduce transactional and litigation costs in cross-border civil and commercial matters and, ultimately, make multilateral trade and investment easier.

The complexity associated with the recognition and enforcement of foreign judgments has always been a significant obstacle to cross-border litigation and has therefore prompted businesses to opt for arbitration. In order to tackle this issue, the

Convention is expected to simplify the foreign judgment enforcement process and to allow a more effective access to justice.

The scope of the Convention encompasses judgments in civil and commercial matters (Article 1).

Article 2, however, provides a series of exceptions to the scope of the Convention. For instance, the Convention does not apply in matters that concern (i) the status and legal capacity of natural persons; (ii) family law matters; (iii) the carriage of passengers and goods; (iv) the validity, nullity or dissolution of legal persons or associations of natural or legal persons and the validity of decisions of their organs; (v) privacy; (vi) intellectual property; or (vii) antitrust and competition law matters (with the notable exceptions of judgments based on anti-competitive agreements between companies). These exclusions, however, do not apply if such issues arise merely as a preliminary question in the proceedings and not as the principal subject-matter of the dispute at hand.

As a general rule, Article 4 provides that “[a] *judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) [...]. There shall be no review of the merits of the judgment in the requested State*”.

Article 7 then contains a list of specific grounds on which recognition or enforcement may be refused. For instance, this list includes cases (i) where the judgment has been obtained by fraud; (ii) where improper notice was given to the defendant(s); (iii) where the enforcement or recognition of the judgment would be manifestly incompatible with the public policy of the requested State; or (iv) where the judgment would be inconsistent with a judgment given by a court of the requested State.

The Convention is open for signature by all States (at the time of writing, Uruguay had already signed the Convention). The Convention would then need to be ratified by the signatory States and will subsequently enter into force one year after the second ratification by a contracting State.

It is also worth recalling that the Convention follows the adoption, in 2005, of the Hague Convention on Choice of Court Agreements (discussed [here](#)) which essentially aimed at requiring courts of contracting States to respect the exclusive forum clauses agreed upon by parties in their commercial contracts.

Copyright © 2016 International Litigation Blog.

All Rights Reserved.

Reproduction totale ou partielle interdite.