

# UK accession to the Hague Convention on Choice of Court Agreements

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**Dispute Resolution analysis: The UK is a party to the Hague Convention on Choice of Court Agreements due to its being an EU Member State. The convention will be of importance following the UK leaving the EU on 29 March 2019 to assist in the determination of jurisdiction and the enforcement of judgments. Angharad Parry of 20 Essex Street Chambers considers the UK's accession to the convention in its own right and its potential impact.**

## Original news

Hague Conventions on Choice of Court and Maintenance ratified by UK [LNB News 03/01/2019 70](#)

On 28 December 2018, the UK deposited its Instrument of Accession to the Hague Convention on Choice of Court Agreements. The Hague Choice of Court Convention will thus enter into force for the UK, in its own right on 1 April 2019, shortly after Brexit—provided that the Withdrawal Agreement has not been entered into prior to Brexit. In the event that the Withdrawal Agreement enters into force between the UK and the EU prior to Brexit, the UK proposes to withdraw its Instrument of Accession.

The UK is currently party to the Hague Choice of Court Convention by means of its EU membership, but moving to membership in its own right, would allow this instrument (at least) to remain applicable in the event of No deal Brexit. All EU states are currently party to the Hague Choice of Court Convention. Mexico, Montenegro and Singapore are also parties to the convention, with Ukraine and China being at the signatory stage.

The Hague Choice of Court Convention provides for mutual recognition of exclusive jurisdiction clauses in civil and commercial matters, and recognition of judgments based on those exclusive jurisdiction clauses. Crucially, therefore, this would provide for a mechanism for recognition of English judgments (based on English law exclusive jurisdiction clauses) in other EU Member States in the event of a No deal Brexit.

## Exclusions and declarations

It must be stressed, however, that the convention provides a lengthy list of exclusions which are found in Article 2. Unsurprisingly, it does not apply to arbitration. Of perhaps most relevance to those in the commercial sphere, further exclusions include (but are not limited to):

- contracts of employment
- insolvency and analogous matters
- carriage of passengers and goods
- various maritime specific types of claim (eg general average, maritime limitation of liability)
- marine pollution
- anti-trust (competition) issues

It is further understood from the Government's Explanatory Memorandum on Convention on Choice of Court Agreements that the UK is making a declaration that the Hague Choice of Court Convention is to be re-restricted in application as regards insurance contracts and will not apply to insurance contracts except as provided for in paragraph 1 of the declaration. Given its complexity, this paragraph 1 is quoted in full:

'1. The United Kingdom of Great Britain and Northern Ireland will apply the Convention to insurance contracts in the following cases:

(a) where the contract is a reinsurance contract—

(b) where the choice of court agreement is entered into after the dispute has arisen—

(c) where, without prejudice to Article 1 (2) of the Convention, the choice of court agreement is concluded between a policyholder and an insurer, both of whom are, at the time of the conclusion of the contract of insurance, domiciled or habitually resident in the same Contracting State, and that agreement has the effect of conferring jurisdiction on the courts of that State, even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State—

(d) where the choice of court agreement relates to a contract of insurance which covers one or more of the following risks considered to be large risks:

(i) any loss or damage arising from perils which relate to their use for commercial purposes, of, or to:

(a) seagoing ships, installations situated offshore or on the high seas or river, canal and lake vessels—

(b) aircraft—

(c) railway rolling stock—

(ii) any loss of or damage to goods in transit or baggage other than passengers' baggage, irrespective of the form of transport—

(iii) any liability, other than for bodily injury to passengers or loss of or damage to their baggage, arising out of the use or operation of:

(a) ships, installations or vessels as referred to in point (i)(a)—

(b) aircraft, in so far as the law of the Contracting State in which such aircraft are registered does not prohibit choice of court agreements regarding the insurance of such risks—

(c) railway rolling stock—

(iv) any liability, other than for bodily injury to passengers or loss of or damage to their baggage, for loss or damage caused by goods in transit or baggage as referred to in point (ii)—

(v) any financial loss connected with the use or operation of ships, installations, vessels, aircraft or railway rolling stock as referred to in point (i), in particular loss of freight or charter-hire—

(vi) any risk or interest connected with any of the risks referred to in points (i) to (v)—

(vii) any credit risk or suretyship risk where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risk relates to such activity—

(viii) any other risks where the policy holder carries on a business of a size which exceeds the limits of at least two of the following criteria:

a balance-sheet total of €6,2m—

a net turnover of €12,8m—

an average number of 250 employees during the financial year.

The UK also declares that it may, at a later stage based on experience of the application of the convention, reassess the need to maintain this declaration.

Accession to the Hague Choice of Court Convention as an individual state is therefore not a complete substitute for current recognition and enforcement regimes to which the UK is party within the EU framework.

### **Potential impact**

Crucially, the convention will only apply to exclusive jurisdiction agreements entered into on or after 1 April 2019. This may mean that, in the event of No deal Brexit, parties to contracts may wish to consider redrafting to include exclusive jurisdiction clauses or entering into supplemental agreements

to this effect on or after 1 April 2019. There remains the issue of a potential lacuna as to the treatment of exclusive jurisdiction clauses entered into prior to this date, but when the UK was a member of the Hague Choice of Court Convention by virtue of its EU membership. The UK itself has tried to ensure a smooth transition, without a gap, by means of a statutory instrument Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018. However, this cannot determine how other EU Member States will treat the matter. It remains unclear whether courts of EU Member States will recognize exclusive jurisdiction clauses entered into during the period of the UK membership of the Hague Choice of Court Convention as an EU member, in the event of a No deal Brexit.

General media reporting in the UK suggests that the Withdrawal Agreement will not be accepted by the UK Parliament. However, should the Withdrawal Agreement in fact enter into force, then a status quo position holds for 21 months during a transition period running until 31 December 2020. A judgment given in proceedings started before the end of the transition period will continue to be enforceable in accordance with the Brussels I Regulation, whether enforcement takes place during or after the end of the transition period. The UK would then again accede to the Hague Convention in its individual name so that it would enter into force on 1 January 2021.

In the current state of uncertainty as to political next steps, businesses remain uncertain as to the enforceability in EU Member States of English judgments (including on exclusive jurisdiction clauses) which may be rendered before exit day, but of which enforcement is only sought after Brexit.

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