

Insights

ENFORCEMENT OF JUDGMENTS BETWEEN FRANCE AND ENGLAND

DOES HAGUE 2019 ALLOW US NOW TO BREATHE A SIGH OF RELIEF?

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SUMMARY

Being able to enforce a judgment is of crucial importance for businesses: securing a judgment is a pyrrhic victory unless it can be enforced. Here we explore whether concerns about the recognition and enforcement procedure between France and England can now be laid to rest. Our answer is that for commercial and finance parties, the answer is to a large degree, yes.

Historically, France and England were able to take advantage of the simplified EU regime to enforce automatically, judgments in civil and commercial matters in their respective jurisdictions. The applicable enforcement regime is now different. It is welcome news indeed that, certainly from July onwards, although still not entirely as straightforward as previously, the route to enforcement will in most cases become swifter and more efficient and cost-effective.

The UK and France (through the EU) are parties to the 2005 Hague Convention^[1] and the 2019 Hague Convention^[2] comes into force in the UK in July of this year. Both provide a simplified route to recognition and enforcement of judgments.

Parties seeking to enforce a French judgment in England or an English judgment in France and looking to rely on the 2005 Convention are not able to do so if their contract does not contain an exclusive choice of court agreement. Therefore, whilst providing an efficient route to enforcement, it was routinely not applicable. The question of whether a choice of court agreement is exclusive was crucial and has been a key limitation with this enforcement regime.

The fact that the 2005 Convention was generally accepted not to be applicable where the parties' agreement contained either a non-exclusive or an asymmetric (or unilateral) choice of court agreement has historically been problematic since it has severely curtailed freedom of contract. The freedom of commercial parties to choose where to litigate their disputes has been fettered.

Asymmetric clauses are also often the preference of financial institutions (obliging one party - the borrower - to submit disputes to the courts of a particular jurisdiction while the other party - the lender - may submit disputes to the courts of a jurisdiction of their choice). They are a common feature of financial documents governed by English law.

This issue is however resolved to a large degree by the 2019 Convention. From July 2025, it will apply in England (as it already has done in France since September 2023) for the recognition and enforcement of judgments in civil and commercial matters. Parties will be able to rely on the 2019 Convention when the judgment was given by a court designated in an agreement containing a non-exclusive or asymmetric jurisdiction clause.

The 2019 Convention is not a panacea. It does not provide for the automatic recognition and enforcement of judgments, and article 5 limits its applicability by listing a number of requirements for eligibility including that the entity against whom recognition is sought had their principal place of business or maintained a branch (or similar) in the State of the court which granted the judgment. However, where applicable it provides a simplified and relatively easy and cost-effective avenue to enforcement in France and England of their courts' respective judgments. Together with the 2005 Convention, the 2019 Convention will go a long way to plugging the gap left by EU legislation historically applicable to the UK.

Of crucial importance is the fact that, as with the 2005 Convention, the French and English courts will have only limited bases upon which to refuse recognition and enforcement under the 2019 Convention. These are set out at article 7 and include where the judgment was obtained by fraud, the judgment is inconsistent with other judgments, or the defendant was not served with the claim in sufficient time properly to defend it. Neither can the French or English courts refuse to recognise or enforce the other's judgments on the basis that enforcement should be sought in another State.

What this essentially means is that to enforce a French judgment in England will not require fresh proceedings to be brought in England to convert the judgment into an enforceable English judgment; the process will be by simple application for registration of the judgment requiring only the documents specified at article 12 of the 2019 Convention to be produced to the English court. Under article 12, an application for the recognition and enforcement of a French judgment in England should usually require only a certified copy of the judgment and documents showing it is enforceable in France together with translations. A default judgment will also require evidence that the claim was notified to the defendant.

To enforce an English judgment in France will require the party seeking its enforcement to apply to the French judge to obtain a declaration (an *exequatur*) stating that the judgment is enforceable in France but the French judge will be required to make this decision based on the rules set out in the 2019 Hague Convention.

As well as providing much-needed certainty, all this will clarify and simplify the enforcement process in France and England of the other State's judgments, extending to a much-expanded range of commercial judgments previously not covered by the 2005 Convention. Of note also for commercial and finance parties is that article 13 requires the court where enforcement is sought to act expeditiously.

WHAT DOES THIS MEAN FOR YOU?

Commercial and finance parties require certainty in their dealings and predictability of outcome. The Hague Conventions taken together will go a long way to providing this. Whilst the Conventions will not always provide the answer, they will do so in a substantial number of cases.

Commercial and finance parties can from July generally be more confident when doing business in France and England and when bringing a claim in one territory where enforcement will be necessary against assets located in the other.

[1] Convention of 30 June 2005 on Choice of Court Agreements (the "2005 Convention")

[2] Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the "2019 Convention")

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