The New Hague Judgments Convention: a timely tool for financial services firms?

July 10, 2019

On July 2, 2019, 83 member states of the Hague Conference on Private International Law signed the Hague Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Hague Judgments Convention). Once ratified by relevant member states this international treaty will foster the further development of cross-border business and seeks to do for court judgments what the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) did for arbitral awards. For those active across Europe, the Hague Judgments Convention is particularly timely in light of Brexit and the potential upheaval if and when the UK leaves the EU.

The status quo: what happens when there's a cross-border dispute?

Traditionally, the resolution of cross-border disputes was not a straightforward process. Even where there was a court judgement or arbitral award from one jurisdiction, recognition and/or enforcement in another jurisdiction was not a given and was subject to the domestic laws of the country where recognition/enforcement was sought.

Various treaties have addressed this issue, perhaps none as successfully as the New York Convention of 1958. Currently, more than 150 countries apply common legislative standards to foreign arbitral awards:

- National courts are prevented from reviewing a tribunal's decision on the merits (revision au fond).
- Enforcement is required by national courts when presented with: an award, the arbitration agreement and, in some instances, a translation of the award.
- Exceptions to enforcement are limited to enumerated grounds including an invalid arbitration clause, violation of due process, improper constitution of the tribunal, and a violation of public policy of the country where enforcement is sought.

Court judgments have not benefited from a similarly widespread approach to recognition and enforcement. Notable exceptions have included the process known as “mutual recognition” within the European Union, which requires the automatic recognition of one court’s judgment in every other EU member state. Furthermore, enforcement is virtually guaranteed and may only be denied on limited grounds (e.g., contrary to the public policy of the country in which enforcement is sought).

The New Hague Judgments Convention

The new Hague Judgments Convention\(^1\) aims to do for court judgments what the New York Convention did for arbitral
awards and will come into force once two signatories ratify it. It applies broadly to judgments relating to civil or commercial matters and requires recognition and enforcement in one contracting state (requested state) of a judgment given by a court in another contracting state (state of origin). Notable features include:

- A review of the merits of the judgment in the requested state is prohibited.
- A judgment shall be recognized only if it has effect in the state of origin.
- A judgment shall be enforced only if it is enforceable in the state of origin.
- If a judgment is still subject to review in the state of origin, the requested state’s courts may (a) grant recognition or enforcement subject to security if it deems it appropriate; (b) postpone the decision on recognition or enforcement; or (c) refuse recognition and enforcement (subsequent application permitted).
- Judicial settlements (transactions judiciaires) are to be enforced in the same manner as a judgment if they are enforceable in the same manner as a judgment in the state of origin.

Recognition and enforcement may be refused only for stated grounds. These include:

- Improper notification of proceedings;
- A judgment obtained by fraud;
- Manifest incompatibility with the public policy of the requested state;
- Proceedings in the court of origin are contrary to an agreement under which the dispute in question was to be determined;
- Inconsistency with a judgment given in the requested state in a dispute between the same parties, and;
- Inconsistency with an earlier judgment in another state between the same parties on the same subject matter (providing that judgment fulfills the conditions for recognition in the requested state).

The Hague Judgments Convention is particularly well timed for European matters given the fact that the UK will cease to be a member state of the European Union following Brexit. As a result, it will have “third country” status for the purposes of recognition and enforcement of its courts’ judgments in the EU. Ratification of the convention will alleviate this problem.

**Limitation on scope: the convention does not apply to some disputes**

The Hague Judgments Convention does not extend to revenue, customs, or administrative matters.

Additionally excluded from its scope of applicability are matters such as maintenance obligations, family law matters, wills and successions, carriage of passengers, liability for nuclear damage, defamation, and privacy.

**Text of the Hague Judgments Convention**

The full text of the draft Hague Judgments Convention is available here.

1. The new Hague Convention is distinct from the 1971 convention of the same name, which differs in content and
applicability (only Albania, Cyprus, Kuwait, the Netherlands, and Portugal have ratified it).

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