

Brexit – English law and courts: Update on UK’s ratification of Hague Convention on Choice of Court Agreements

April 2019

Introduction

In our February 2019 bulletin on whether recent developments in relation to Brexit should lead clients to change their approach to English governing law and jurisdiction clauses, available [here](#), we noted that on 28 December 2018, the UK had deposited its instrument of accession to the Hague Convention on Choice of Court Agreements 2005 (the **Hague Convention**).

The Hague Convention is an international convention which requires Contracting State courts (including all EU Member State courts) to respect exclusive jurisdiction clauses in favour of other Contracting State courts and to enforce related judgments. The UK is currently party to the Hague Convention in its capacity as an EU Member State.

When the UK deposited its instrument of accession in December 2018, it did so in contemplation of a possible “no-deal” Brexit on 29 March 2019. In such a situation, the Hague Convention would have entered into force in the UK in its own right on 1 April 2019 (the first day of the month following the expiration of three months after the deposit of the instrument of accession – see Article 31). This approach would have been helpful for commercial parties had there been a no-deal Brexit on 29 March, as although the EU regimes on jurisdiction and the enforcement of judgments (the Recast Brussels Regulation and the Lugano Convention) would no longer apply to English jurisdiction clauses and judgments in such circumstances, commercial parties could rely on the Hague Convention in the vast majority of cases to ensure that exclusive English jurisdiction clauses were respected by the courts of EU Member States, as well as the courts of other Contracting States (ie currently Singapore, Montenegro and Mexico), and that judgments pursuant to those clauses would be enforced in those jurisdictions.

When the UK deposited its instrument of accession it specifically stated that, if the withdrawal agreement agreed politically between the EU27 and the UK in November 2018 was ratified, then EU law and the Hague Convention would continue to apply in the UK during the proposed transition period. The UK did not however make it clear what would happen in relation to its instrument of accession if the period for negotiating the UK’s exit from the EU under Article 50 of the Treaty on European Union (**TEU**) was extended.

As has been widely discussed, on 22 March 2019, the UK and the European Council agreed an extension of the period for the withdrawal of the UK from the EU under Article 50(3) of the TEU. As the European Council’s decision made clear, the length of the extension was contingent on whether the UK Parliament approved the withdrawal agreement.

Impact of extension of Article 50 period

The impact of the extension of the Article 50 period on the UK’s ratification of the Hague Convention has now been clarified. The UK made a further declaration on 28 March 2019 stating that:

- During the extension of the Article 50 period, the UK will continue to be a Member State of the EU, such that the Hague Convention will continue to apply;
- The UK Government “attaches importance to the seamless continuity of the application of” the Hague Convention to the UK; and
- In view of the short period of extension, the UK Government suspends the date of the UK’s accession to the Hague Convention from 1 April 2019 until 13 April 2019 or 23 May 2019, in accordance with the decision of the European Council extending the Article 50 period.

Further, on 29 March 2019, the Hague Convention Depository (the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the Hague) issued a notice as follows: “With reference to depositary notification Choice of Court No. 01/2019, dated 2 January 2019, regarding the accession to the Convention by the United Kingdom, the depositary communicates that the accession is suspended until 13 April 2019 or 23 May 2019.”

The UK Government has also published a very short guidance note for legal professionals on the application of the Hague Convention in the UK following a no-deal Brexit (and on the UK’s approach more generally to jurisdiction, enforcement of judgments and governing law on a no-deal Brexit). This is available [here](#).

The result of the steps taken by the UK appears to be that, for now at least, the UK remains bound by the Hague Convention by virtue of its continued membership of the EU. The UK’s accession to the Hague Convention in its own right will simply sit in suspension during the Article 50 extension period. This approach, although somewhat unusual, makes practical sense and should provide for a relatively seamless transition if there is a no-deal Brexit on 12 April, which will reassure commercial parties considering the future status of exclusive English jurisdiction clauses and resulting judgments. It remains to be seen whether the UK will seek to take a similar approach in relation to any subsequent extension that may be agreed.

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