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The United States Signs the 2019 Hague Judgments Convention

On March 1, 2022, the United States became the sixth State to sign the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“Judgments Convention”).¹ If ratified, the Judgments Convention will enable judgment holders to limit the “myriad of substantive, procedural, and practical hurdles” often encountered in enforcing judgments in foreign jurisdictions.²

Current U.S. Law on Foreign Judgment Recognition

The procedure for the recognition and enforcement of foreign judgments in the U.S. is currently regulated on a state-by-state basis. The substantive law in the U.S. on foreign judgments remains a patchwork of uniform acts and common law loosely descended from the U.S. Supreme Court decision in *Hilton v. Guyot* (1895).³ *Hilton* clarified that, while in principle the merits of a foreign judgment should not be relitigated, there are grounds for refusing recognition and enforcement of foreign judgments.

The mandatory grounds for non-recognition and non-enforcement of a foreign judgment in the U.S. are: (1) lack of systemic due process in the court system of the state of origin; (2) lack of subject matter jurisdiction of the court of origin; (3) lack of personal jurisdiction by the issuing court over the defendant; and (4) a judgment resting on a claim of defamation where recognition or enforcement is prohibited by the SPEECH Act. The discretionary grounds for non-recognition and non-enforcement that a U.S. court may invoke in its discretion include: (1) insufficient notice to the defendant; (2) fraud in the proceedings; (3) a violation of public policy; (4) conflicting judgments; and (5) the issuing court was a seriously inconvenient forum.⁴

State Party Obligations Under the Judgments Convention

The Judgments Convention seeks to ease the recognition and enforcement of foreign civil judgments between State Parties. Under the



Convention, a judgment rendered by the judiciary of one Party would be recognized and enforced by the judiciary of another Party, unless one of the narrow grounds applies. The Convention applies to all civil and commercial judgments but excludes certain categories of judgments, such as judgments concerning family matters, defamation and privacy, intellectual property, and transboundary marine pollution.

The core obligation of the Judgments Convention is codified in Article 4:

A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) . . . Recognition or enforcement may be refused only on the grounds specified in this Convention [under Article 7]. There shall be no review of the merits of the judgment in the requested State.⁵

This provision would displace the various grounds for non-recognition and non-enforcement under existing U.S. law. Under Article 7 of the Judgments Convention, a foreign judgment only may be refused recognition and enforcement if there is: (1) insufficient notice to the defendant; (2) fraud in the proceedings; (3) a conflict with the enforcing State's public policy; (4) a conflict with a choice of forum agreement; or (5) a conflict with prior judgments rendered in a dispute between the same parties.⁶

Uncertain Future

Only six States (including the U.S.) have signed the Judgments Convention, but none have ratified it. The Convention will not enter into force until one year has elapsed following the ratification of the Convention by at least two State Parties.

Furthermore, it is unclear if the U.S. will ultimately ratify the Judgments Convention as there may be disagreement over how to implement the Convention domestically (namely, whether it will be implemented by federal law, state law, or a combination). Notably, the Hague Convention on Choice of Court Agreements was signed by the U.S. in 2009, but has not yet been ratified for similar reasons.

However, if enough States sign and ratify the Judgments Convention, the benefits to U.S. litigants will be significant as U.S. judgment creditors will be able to recognize and enforce their judgments in State Parties under a simplified and streamlined procedure. We anticipate that such benefits will be comparable to those enjoyed by European litigants who have long benefitted from a harmonized approach to the recognition and enforcement of judgments from the courts of EU Member States.



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¹ The U.S. joined Costa Rica, Israel, the Russian Federation, Ukraine, and Uruguay as signatories.

² Sarah E. Coco, Note, The Value of a New Judgments Convention for U.S. Litigants, 94 N.Y.U. L. Rev. 1209, 1212-13 (2019).

³ 159 U.S. 113, 206 (1895).

⁴ 2005 Recognition Act, § 4(b), (c); 1962 Recognition Act, § 4(a), (b); Restatement (Fourth) of Foreign Relations Law, §§ 483-484.

⁵ 2019 Hague Judgments Convention, Art. 4, ¶¶ 1-2.

⁶ For further analysis of these effects, see Diana A. A. Reisman, Breaking Bad: Fail-Safes to the Hague Judgments Convention, 109 THE GEORGETOWN LAW JOURNAL 229 (2021).