

London Solicitors Litigation Association (“LSLA”) Response to Hague 2019 Consultation

The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has over 3700 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change. Representatives from the City of London Law Society also sit on the LSLA Committee.

This document sets out the response of the LSLA to the Government’s consultation on Hague 2019.

Q1: Should the UK accede to Hague 2019? Please provide your reasoning. What do you expect the added value to be for the UK upon accession?

Yes. We are strongly supportive of the UK acceding to Hague 2019. As set out below, the considerable advantages to the UK will be legal certainty and cost savings for litigants, encouraging use of England & Wales as a forum for resolution of international disputes and international trade.

At present with the UK’s application to join the 2001 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments (the Lugano Convention) still pending, there is significant variation in how UK Judgments are treated in different countries, including EU member states, and vice versa. Different Conventions apply and there is no one effective mechanism in place to obtain redress. This increases uncertainty and cost and risks making UK Courts a less attractive forum for resolving disputes. The EU (and Ukraine) has already deposited its instrument of accession to Hague 2019 and so by also acceding, there would be a set of common rules for recognition and enforcement of judgments between the UK and the EU. This would provide certainty while the UK awaits a decision as to its application to join the Lugano Convention. It would also provide certainty in the long term with regards to recognition and enforcement of judgments between the UK and the other states who accede to Hague 2019.

With contracting States of Hague 2019 bound to recognise and enforce judgments from other Contracting States, enabling a litigant to make an informed decision as to where to initiate proceedings, subject to jurisdiction rules and some exceptions, taking into account where a judgment will be recognised and enforced, will encourage continued use of UK Courts now and in the future. We agree that this in turn is likely to encourage international trade and investment in the UK as the consultation paper acknowledges.

Costs savings are likely to be made by parties given that there will be a global framework of common rules to facilitate the recognition and enforcement of judgments from one jurisdiction to another (assuming other countries accede to Hague 2019). By ensuring certainty and making it easier from a procedural perspective for judgments to be recognised and enforced internationally, we agree that the Convention enhances access to justice as well as litigation cost savings and will be attractive for parties considering bringing their claims before the UK Courts.

From our members’ perspective, this would enhance the position of London as a leading global centre for the resolution of international disputes and assist in enabling the UK Courts and legal system to keep pace in the international and multijurisdictional area of enforcement.

Q2: Is this the right time for the UK to consider Hague 2019? Are there any reasons why you consider now would not be the right time for the UK to become a Contracting State to the Convention?

Article 28 of Hague 2019 stipulates that it shall enter into force 12 months after the ratification, acceptance, approval or accession of two states (the 12-month period allowing for bilateral objections under Article 29). On 29 August 2022, the EU deposited its instrument of accession to Hague 2019 and shortly after Ukraine

deposited its instrument of ratification. As such, Hague 2019 will enter into force on 1 September 2023 and will apply between EU Member States (not Denmark) and Ukraine.

Now is the right time for the UK to accede to Hague 2019. Given the EU and Ukraine's accession, it would create a simpler and more efficient route to recognition and enforcement between the UK and EU and Ukraine. The UK Government should not wait for a decision on its application to join the Lugano Convention, as acceding to Hague 2019 would not prevent a successful Lugano Convention application, and the UK should seek to obtain the benefits of Hague 2019 as soon as possible.

Q3: What impact do you think becoming a Contracting State to the Convention will have for UK parties dealing in international civil and commercial disputes?

As set out above in response to question 1, UK parties will have more certainty that recognition and enforcement of UK and foreign judgments will be dealt with consistently. There are also likely to be costs savings given that there will be a set of common rules.

Q4: What legal impact will becoming a Contracting State to the Convention have in your jurisdiction (i.e. in England and Wales, in Scotland or in Northern Ireland)?

Please see our response to question 1.

Q5: What downsides do you consider would result from the UK becoming a Contracting State to the Convention? Please expand on the perceived severity of these downsides.

We do not consider there to be any downsides.

We do however urge the UK Government to continue its campaign to accede to the Lugano Convention and for this to be made clear at the time of accession to Hague 2019. As set out below, Hague 2019 is not as comprehensive as the Lugano Convention and should not be seen as a substitute for it.

Q6: Are there any aspects or specific provisions in the Convention that cause concern or may have adverse effects from a UK perspective?

We do not consider there to be any provisions which cause concern or have adverse effects from a UK perspective.

Q 7: Do you have a view on whether the Convention should be implemented using a registration model for the purpose of recognition and enforcement of judgments from other Contracting States?

A process of registration is already operating in the UK in respect of other arrangements for the enforcement of foreign judgments and we see no reason to depart from that model which works well. It is also desirable to be able to monitor the number of requests being made.

Q8: Do you have a view on how the Convention should be implemented for the purposes of establishing how indirect jurisdictional grounds should be established by the relevant domestic court?

The UK is in the very fortunate position whereby UK Courts are well accustomed and are well placed to consider indirect jurisdictional grounds and whether and how a judgment meets the eligibility requirements set out in Article 5.

Q9: In your view, are there any declarations which the UK should make? If so, why?

We do not consider there to be a need for the UK to make any declarations at this stage. It is likely that if the UK adopts declarations, other contracting states may do the same. In accordance with Article 30, declarations "may be made upon signature, acceptance, approval or accession or at any time thereafter, and may be

modified or withdrawn at any time". Noting there is a delay of three months for declarations made at a subsequent time, but we do not think there are any declarations which should be made at this time.

Q10: What do you consider would be the legal or practical implications of the UK applying the reservation suggested in relation to the Russian Federation (paragraph 4.22)? It should be noted that it would always be possible to repeal such a reservation in the future.

The Russian Federation has signed Hague 2019, but it will not come into force in a State until the State ratifies or accedes to it. If the UK were to apply the reservation, it would give a clear steer to the Russian Federation that it does not intend to recognise or enforce any Russian judgments in the UK Courts. This will likely be reciprocated in the Courts of the Russian Federation. In practical terms, we acknowledge that this is already likely to be the situation in any event given the UK sanctions regime.

Pursuant to Article 16, Hague 2019 will not apply unless the proceedings that led to a judgment were instituted at a time when Hague 2019 was in force for both the State in which the judgment in question was rendered and the State where the judgment is to be enforced. We are a way off any reservation having any legal impact.

We see no reason from a legal perspective to apply the reservation/declaration at this stage. Article 30 makes clear that declarations may be made at any time after accession. The UK can wait until the point at which the Russian Federation indicates its intention to accede to Hague 2019 to see whether it considers it necessary to apply the reservation suggested in relation to the Russian Federation. It is a separate matter, on which we do not comment, whether it is desirable to do so as a matter of diplomacy and international relations.

Q11: While both Hague 2019 and the 2007 Lugano Convention provide a framework for recognition and enforcement of civil and commercial judgments, what drawbacks, if any, do you foresee if the UK were to apply only Hague 2019 with EU/EFTA States, given its narrower scope and lack of jurisdiction rules? Please provide practical examples of any problems.

As set out above, Article 16 means that Hague 2019 will only apply between States who are signatories from the date Hague 2019 is in force in both States. The impact of Hague 2019 in relation to the UK in the immediate future is likely to be limited given that there will be a delay in practice before Hague 2019 applies and Hague 2019 is still more limited in scope than the Lugano Convention.

There are obvious downsides to adopting Hague 2019 alone without continuing to seek accession to the Lugano Convention and/or other multijurisdictional instruments. Notably, Hague 2019 does not address jurisdictional rules and many specific types of judgments are excluded from scope (including privacy, intellectual property, insolvency and defamation). For reasons discussed above, this is undesirable as it increases costs and uncertainty for litigants and runs the risks of a detrimental impact on access to justice, international trade and the use of the UK Courts for resolving international disputes. We would, therefore, urge the UK government vigorously to pursue its Lugano application and other arrangements concerning reciprocal rules for jurisdiction and enforcement of judgments covering the full range of civil and commercial matters with EU Member States and other countries.

Article 23 of Hague 2019 contains a 'give way' clause in favour of treaties concluded on the same subject matter, either earlier or later than Hague 2019. Hague 2019 therefore provides maximum docility to regional or bilateral instruments, so that more subject specific regional treaties are not overridden by the more general provisions of Hague 2019. As such, should the UK manage to join the preferential Lugano Convention at a later date, there are no downsides and indeed, are many advantages to opting for some certainty now and acceding to Hague 2019.

Nevertheless, as the EU has withheld its consent to the UK's application to accede to the Lugano Convention and we are not aware that the EU is currently minded to modify its view, the only presently available option for a reciprocal arrangement with the EU is UK participation in Hague 2019 and we strongly encourage the Government to proceed with accession to Hague 2019.

Q12: Do you consider that the UK becoming party, or not becoming party, to the Hague 2019 Convention would have equalities impacts in regards to the Equalities Act 2010?

We do not foresee any impact from our members' perspective.

Q13: Would you foresee any intra-UK considerations if the Hague 2019 was to be implemented in only certain parts of the UK?

The LSLA represents solicitor interests in London and is primarily concerned with the impact of Hague 2019's application to England. Of course, accession by all parts of the UK would establish a unified regime which in practical terms is likely to represent the most straightforward and clear approach.

Q14: What other comments, if any, do you have?

None.

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