

Contents

1. Objectives of the Choice of Court Convention
2. Summary of the basic features of the Convention
3. Current status
4. Promotion efforts
5. Implementation Checklist

Objectives of the Choice of Court Convention

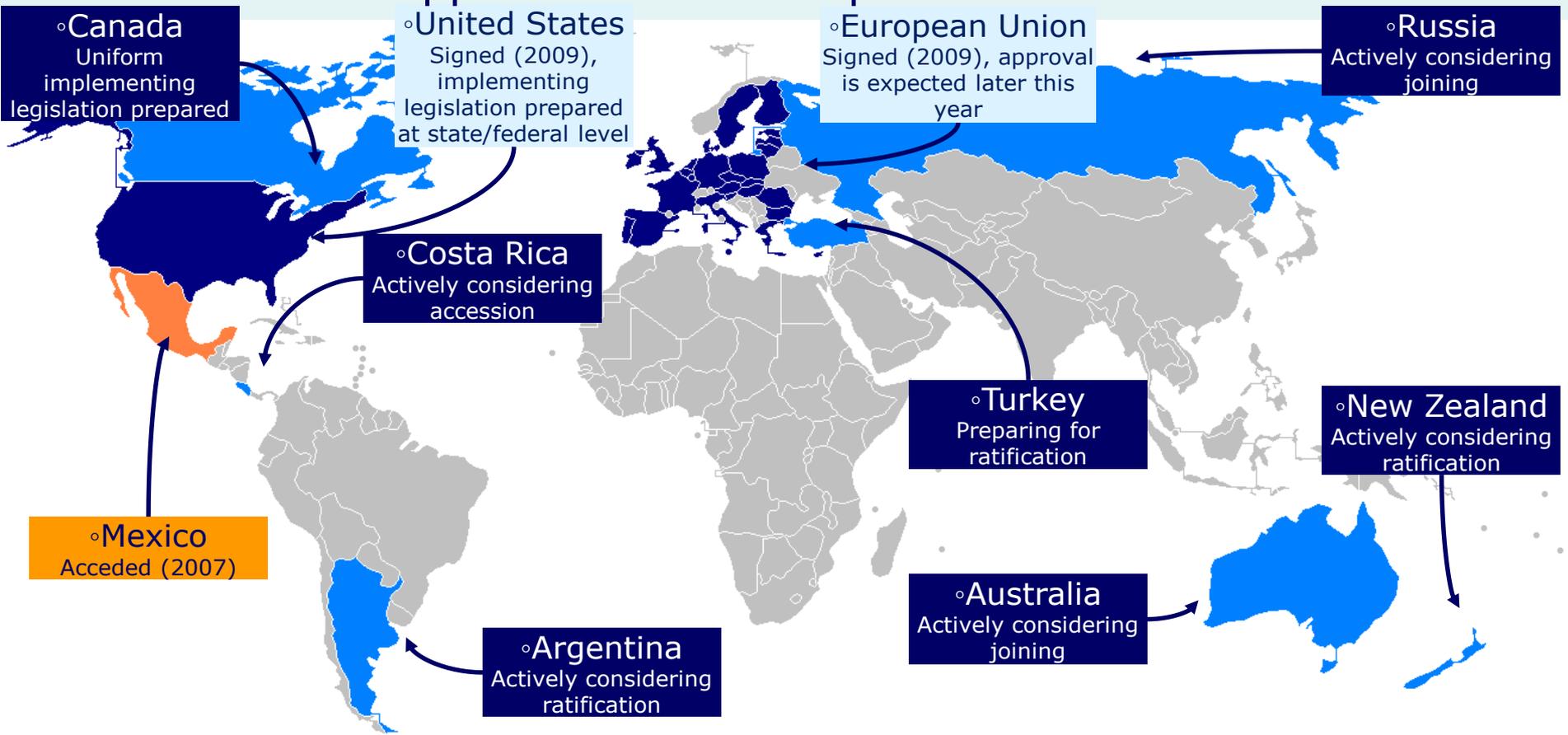
- ▶ The Convention was concluded in 2005
- ▶ Main objectives are to:
 - Provide legal certainty and predictability with respect to choice of court agreements (a tool for transactional planning); and
 - Become the litigation equivalent of the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (reinforce dispute settlement framework in Contracting States).

How would the Convention change current practice?

- A 2012 Finnish case provides an example of the benefits of the Choice of Court Convention.
- Contract contained a choice of court agreement designating courts in the US state of California.
- Judgment was rendered by the chosen court and enforcement was sought in Finland.
- Finnish law requires an international binding agreement for the recognition and enforcement of judgments and no such agreement exists between Finland and the US. As such, the judgment creditor brought fresh proceedings.

◦ Status of the Convention

◦ The Convention is set to enter into force in early 2015 with the approval of the European Union.



Scope of the Convention

- The Convention only applies to *international* cases
- The choice of court agreement must be exclusive. It is deemed exclusive unless the agreement expressly provides otherwise
- The choice of court agreement must relate to civil or commercial matters

International Cases

- For the purposes of *jurisdiction*, a case is international unless the parties are resident in the same Contracting State and their relationship, and all other elements relevant to the dispute, are connected only with that State;
- For the purposes of *recognition/enforcement*, a case is international where the judgment was given in another Contracting State

Exclusive choice of court agreements

- A choice of court agreement designating a single court (or the courts of a single State) is deemed exclusive unless the parties expressly provide otherwise.

➔ Article 3(b)

- States may agree (by declaration) to recognise and enforce judgments rendered pursuant to a *non-exclusive* choice of court agreement.

➔ Article 22

Exclusions from scope

- Consumer and employment contracts
 - ➔ Article 2(1)
- Further excluded matters include family law and succession, insolvency, carriage of goods and persons, anti-trust (competition) matters, validity of IP rights other than copyright and related rights.
 - ➔ Article 2(2)
- But the Convention *does* apply where excluded matters arise as preliminary question (e.g. by way of defence) and not as object of the proceedings.
- If a State has a strong interest in not applying the Convention to a specific matter, it may make a declaration to that effect.
 - ➔ Article 21

Key Obligations of the Convention

1. Chosen court **must** hear the dispute.
→ Article 5
2. All other courts **must** suspend or dismiss proceedings.
→ Article 6
3. A judgment given by the chosen court **must** be recognised and enforced by other Contracting States.
→ Article 8

First key obligation:

- **Chosen court cannot refuse to hear the dispute because:**
 - it considers that a court of another State is more appropriate (*forum non conveniens*); or
 - a court of another State was seized first (*lis pendens*)
- **Chosen court may refuse to hear a dispute where the choice of court agreement is null and void under the law of that State (including conflict of law rules)**
 - ➔ **Article 5**
- **No effect on internal rules on subject matter jurisdiction or venue**

Second key obligation:

➤ Court not chosen may only hear the dispute if:

- the choice of court agreement is null and void under law of State of chosen court (includes conflict of law rules);
- a party lacked capacity to conclude the agreement under the law of State of the court seized (includes conflict of law rules);
- giving effect to the agreement would lead to manifest injustice or would be manifestly contrary to the public policy of the State of the court seized;
- for exceptional reasons beyond control of the parties, the agreement cannot reasonably be performed; or
- the chosen court has decided not to hear the case

➔ Article 6

Third key obligation

- **The court addressed may refuse to recognise/ enforce a judgment by the chosen court if:**
 - the choice of court agreement was null and void under law of State of the chosen court (unless otherwise determined by the chosen court);
 - a party lacked capacity to conclude the agreement under the law of requested State;
 - the defendant was not properly notified; or
 - the judgment was obtained by fraud in connection with a matter of procedure

◦ **Promotion efforts**

- **Priority for the Hague Conference to see the Convention's entry into force soon**
- In 2011, the Council on General Affairs and Policy of the Hague Conference stressed the importance of the Permanent Bureau's "ongoing efforts to promote the entry into force of the Convention of 30 June 2005 on Choice of Court Agreements."

How?

1. Implementation dialogue
2. Conferences and seminars
3. Dedicated section on the HCCH website
4. Implementation checklist
5. Monitoring States' interest in joining the Convention
6. Post entry into force

Implementation dialogue

- Launched in 2010 in response to requests by several Members
- Purpose:
 - Enhance interaction between interested States and the Permanent Bureau on implementation issues; and
 - Circulate any materials prepared or gathered by States in relation to the Convention that might usefully be shared with other interested States (eg, impact assessment reports, implementation questions, etc)

Conferences and seminars in key jurisdictions

Promotion activities at a regional level

- *November 2010 – Joint seminar in Brasilia (Brazil) with MERCOSUR Contracting and Associated States; organised by the HCCH and the Brazilian Ministry of Justice*



Conferences and seminars in key jurisdictions

Promotion activities at a regional level

- *September 2013* – The Permanent Bureau, with the support of its Asia Pacific Regional Office, the People's Republic of China and Wuhan University organised a Conference on International Litigation in the Asia Pacific Region.



Support of businesses and professional organisations

***Deutscher
Anwaltverein
(German Bar
Association)***



***International
Chamber of
Commerce***



***Inter-American
Bar Association
IABA***



Dedicated Website

- o **Access to:**
- 1. Text of the Convention
- 2. Recommended Form
- 3. Explanatory documents
- 4. Implementation tools
- 5. News & Events
- 6. Preparatory Work
- 7. Bibliography



HCCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

The World Organisation for Cross-border Co-operation in Civil and Commercial Matters
L'Organisation mondiale pour la coopération transfrontalière en matière civile et commerciale

Contact | About HCCH | FAQ | Help | Disclaimer | Français  | Other languages 

Search

GC

Home

HCCH Members

Non-Member Contracting States

Conventions

Specialised sections

Authorities

Publications

Work in Progress

International Centre

News & Events (archive)

Vacancies / Internships

Home



Since 1893, the Hague Conference on Private International Law, a melting pot of different legal traditions, has developed and serviced Conventions which respond to global needs in the following areas:

International protection of children, family and property relations:

- International protection of children
 - Child Abduction Section
 - INCADAT
 - Inter-country Adoption Section
 - The "Parentage / Surrogacy Project"
- International child support and other forms of family maintenance
- International protection of adults
- Relations between (former) spouses
- Wills, trusts, estates

International legal co-operation and litigation:

- International legal and administrative co-operation
 - Apostille Section (incl. e-APP)
 - Service Section
 - Evidence Section
- Jurisdiction and enforcement of judgments
 - Choice of Court Section
 - The "Judgments Project"

International commercial and finance law:

- Contracts
 - Choice of law in international contracts
- Torts
- Securities
- Trusts
- Recognition of companies




News & Events



Vacancy at the Permanent Bureau: ICATAP Co-ordinator [\[more\]](#)



IABA encourages States to join the Apostille, Service, Evidence, Access to Justice, and Choice of Court Conventions [\[more\]](#)



The Republic of Moldova set to issue e-Apostilles [\[more\]](#)



Host Country Agreement with Argentina for Regional Office in Latin America enters into force [\[more\]](#)

[Latest updates on this site →](#)

© HCCH, 1951-2013
Reproduction is authorised, provided the source is acknowledged, save where otherwise stated.

Slide 20

Implementation checklist

← In 2011, the Permanent Bureau, in consultation with the HCCH Members, created an implementation checklist for States interested in joining the Convention



← Purpose:

- To highlight some of the issues which may need to be considered by a State when implementing the Convention

Implementation checklist overview

□ Preliminary Steps

- ✓ Consult with the Permanent Bureau and other Contracting States on implementation matters.
- ✓ Consult with key stakeholders and subject matter experts to determine the method and implications of becoming a Party, the best methods for implementing the Convention, and develop a plan for implementation and operation of the Convention.

□ Bringing the Convention into force within your State's internal legal system

- ✓ Consider how the Convention will be given force of law within the internal legal order of your State.
- ✓ Review internal laws and practices to ensure that existing provisions are not inconsistent with the Convention.

Implementation checklist overview

← Key provisions that may require specific legislative enactment:

- Definitions
 - Article 2 – Definition of consumer and employment
 - Article 3 – Exclusive choice of court agreements
 - Article 4 – Definitions of judgment and resident
- Basic rules:
 - Article 5 – Jurisdiction of the chosen court
 - Article 6 – Obligation of a court not chosen
 - Article 8 – Recognition and enforcement

Implementation checklist overview

❑ **Determining how to become a party – signature / ratification or accession.**

- ✓ Determine the method for becoming a party – signature followed by ratification or otherwise accession.
- ✓ Take the required steps to become a Party.

❑ **Territorial extension of the Convention**

- ✓ Ascertain the competence of any territorial units in which different systems of law apply over matters governed by the Convention.
- ✓ Determine whether to make a declaration concerning the territorial extension of the Convention.
- ✓ Notify the depositary of any declaration made.

Implementation checklist overview

□ Developing a timetable

- ✓ Determine the date on which the Convention will enter into force for the relevant State.
- ✓ Ensure that by the entry into force date the appropriate implementing measures are in place and that no existing internal law or practice creates an obstacle for the effective implementation and operation of the Convention.
- ✓ Factor in timing for communication with relevant stakeholders regarding the Convention entering into the force.

□ Communication

- ✓ Make certain that all key stakeholders are informed sufficiently in advance of the entry into force date, any resulting changes to relevant internal law and practice, and changes to the respective roles of courts and government departments under the Convention.
- ✓ Ensure that adequate training is provided to individuals involved in the domestic application of the Convention.

◦ **Implementation checklist overview**

□ Declarations

- ✓ Consider the need to make any of the optional declarations provided for under the Convention
 - ✓ Art 19 – limiting jurisdiction where a case is wholly foreign to the State concerned.
 - ✓ Art 20 – limiting recognition and enforcement of foreign judgments where a case is wholly domestic to the State concerned.
 - ✓ Art 21 – excluding specific matters from the application of the Convention
 - ✓ Art 22 – non-exclusive choice of court agreements
 - ✓ Art 26(5)) – on priority of treaties
- ✓ Notify the depositary of any declaration made.

□ Ongoing review processes

- ✓ Develop and implement mechanisms to monitor and evaluate the application and functioning of the Convention.

Post entry into force activities

- If mandated by the Council on General Affairs and Policy:
 - preparation of future publications such as, guides to good practice and practical handbook on the Convention
 - Case law database
- Secretary General can make arrangements for the regular review of the practical operation of the Convention, which will take the form of meetings of Contracting States and other interested States (Art 24)

Thank you

Questions?

