So, is it worth implementing the Choice of Court Convention? If so, how to do so successfully?

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Recap on the basic purpose of the Convention

to ensure the effectiveness of choice of court agreements (also known as “forum selection clauses” or “jurisdictional clauses”) between parties engaged in international commercial transactions
Benefits of the Convention

- Greater dispute resolution options for companies and individuals engaged in cross-border business.
- Simplifies the process for the resolution of cross-border disputes by reducing
  - the risk of litigation in an unfamiliar forum
  - not being able to enforce a judgment debt
Benefits of the Convention

- Promotes international trade and investment through enhanced judicial cooperation
  - In a 2012 statement, the International Chamber of Commerce confirmed that by promoting greater certainty for cross-border business, the Convention should create a climate more favourable for international trade and investment.

- First global litigation convention providing for clearly outlined conditions for the recognition and enforcement of foreign judgments in civil and commercial disputes
Recap on the Status of the Convention

- **Canada**
  - Uniform implementing legislation prepared.

- **United States**
  - Signed (2009), implementing legislation prepared at state/federal level.

- **European Union**
  - Signed (2009), proposal for ratification being prepared.

- **Russia**
  - Actively considering ratification.

- **Mexico**

- **Costa Rica**
  - Actively considering accession.

- **Turkey**
  - Preparing for ratification.

- **New Zealand**
  - Actively considering ratification.

- **Australia**
  - Actively considering ratification.

- **Argentina**
  - Actively considering ratification.
Ongoing efforts of the Permanent Bureau

- 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.”
Ongoing efforts of the Permanent Bureau

1. Implementation dialogue
2. Conferences and seminars around the globe
3. Dedicated section on the HCCH website
4. Implementation checklist
5. Monitoring States interest in joining the Convention
6. Post entry into force
Launched in 2010 in response to requests by several Members

Purpose:

- Enhance interaction between interested States, and within 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
Implementation dialogue

Means of communication is via email and the dialogue is a forum for informal discussion.

The Permanent Bureau has provided a number of suggested discussion topics based on initial consultations with participants.

Participants are free to suggest additional discussion topics that relate to implementation issues.

So far, participants include:

- EU, US, Argentina, Australia, Canada, Costa Rica, Germany, Mexico, New Zealand, Serbia and Ukraine
Conferences and seminars around the world

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

- Now this Conference in Wuhan
Conferences and seminars around the world

Some seminars the Permanent Bureau has presented at on the Choice of Court Convention this year alone:

- International Conference “Fostering Co-operation through Hague Conventions”, Tbilisi, Georgia, 26-28 February 2013
- Seminar “Choice of Court Agreements Convention 2005 and the Hague Conference Asia Pacific Regional Office”, Canberra, Australia, 20 August 2013
- International Conference 5th Journal of Private International Law Conference, Madrid, Spain, 12-13 September 2013
Conferences and seminars around the world

- Collaborating with relevant organisations for future conferences and seminars
  - ASEAN
  - APEC
  - World Bank
  - International Chamber of Commerce
Dedicated Website

Access to:
1. Text of the Convention
2. Recommended Form
3. Explanatory documents
4. Implementation tools
5. News & Events
6. Preparatory Work
7. Bibliography
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 - on 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.
Other ongoing activities of the Permanent Bureau

- Keeping up to date on the status of the Convention in each interested State (e.g., U.S., E.U., Australia, Brazil, Canada, Costa Rica, New Zealand, Paraguay, Russia, Serbia, Ukraine and others)

- Support States with the implementation of the Convention through missions and ongoing consultations with States

- Publications for promotion of the Convention e.g., brochure on international civil procedure
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)
Future activities

The Hague Conference welcomes any suggestions for future activities regarding the implementation and promotion of the Convention
Thank you

Questions?

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