

Overview of Core Conventions and Instruments

Thirty-seven Conventions, two Protocols, and one soft law instrument have been adopted under the auspices of the Hague Conference on Private International Law (HCCH) since 1951. Of these, the following Conventions and Instruments have been selected as a focus of the work of the Permanent Bureau (PB) due to their popularity and relevance; the “Core Conventions”. This selection enables the team at the PB to provide comprehensive post-Convention assistance and ensures that Members and Contracting Parties are utilising, and therefore benefitting, from the work of the HCCH. These 17 Instruments include Conventions with the most Contracting Parties, those that have been recently concluded, and those that cover areas that inherently attract attention in private international law. They are divided into three categories to reflect the three pillars of the work of the HCCH.

International Family and Child Protection Law

1961 Form of Wills Convention

The *Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions* (Form of Wills Convention) establishes common rules for the law governing the form of wills. A will shall be valid if it complies with the internal law of the place where the testator made it; the place of a nationality possessed by the testator; a place in which the testator had their domicile; the place in which the testator had their habitual residence; or, concerning immovable property, the place where the property is situated. This allows testators to dispose of property within a single will, including where property is in different States. The Convention currently has over 40 Contracting Parties.

1970 Divorce Convention

The *Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations* (Divorce Convention) assures divorced and separated spouses that their new status will receive the same recognition abroad as in the country where the divorce or separation is obtained. The Convention simplifies the possibility of remarriage and clarifies the legal relationship of the couple concerned, which can also assist in matters relating to wills and successions. The Convention currently has 20 Contracting Parties.

1980 Child Abduction Convention

The *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (Child Abduction Convention) is designed to protect children internationally from the harmful effects of their wrongful removal or retention. It does so by establishing procedures for the prompt return of a wrongfully removed or retained child to his or her State of habitual residence, including a cooperation mechanism between authorities of Contracting Parties. The Convention further seeks to ensure the protection of rights of access. The Convention deals only with civil aspects of a wrongful removal or retention and does not deal with criminal matters. The Convention currently has over 100 Contracting Parties.

1993 Adoption Convention

The *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Adoption Convention) was developed to respond to the serious and complex human and legal problems in intercountry adoption. It establishes substantive safeguards and procedures aimed at ensuring that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights. The Convention recognises that growing up in a family is of primary importance and is essential for the happiness and healthy development of the child. It also recognises that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin (principle of subsidiarity). The Convention establishes a system of cooperation between authorities in States of origin and receiving States, designed to ensure that intercountry adoption takes place under conditions which help to guarantee the best adoption practices and elimination of abuses. The Convention also guarantees the recognition in all Contracting Parties of adoptions made in accordance with its provisions. The Convention currently has over 100 Contracting Parties.

1996 Child Protection Convention

The *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (Child Protection Convention) supplements and reinforces the Child Abduction Convention. It seeks to protect children in cross-border situations and prevent conflicting decisions between the authorities of different States as to the care and protection of the person or property of the child by determining the competent jurisdiction and the applicable law. It further provides for the recognition and enforcement of measures of protection in the Contracting Parties and for a cooperation mechanism between their authorities. The Child Protection Convention also applies to refugee children and children who, due to disturbances occurring in their country, are internationally displaced. The Convention currently has over 50 Contracting Parties.

2000 Protection of Adults Convention

The *Convention of 13 January 2000 on the International Protection of Adults* (Protection of Adults Convention) applies to the protection of adults in international situations who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests. It does so by providing rules on jurisdiction, applicable law and international recognition and enforcement of both private and public measures of protection and international cooperation mechanisms. The Convention currently has 14 Contracting Parties.

2007 Child Support Convention

The *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (Child Support Convention) facilitates the cross-border recovery of child support (also known as child maintenance or alimony), and any spousal support claimed with child support. It enables creditors to recover maintenance payments efficiently from abroad, significantly reducing application costs for individuals and, in turn, their reliance on governmental support. Over 40 States are currently bound by the Convention.

2007 Maintenance Obligations Protocol

The primary purpose of the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* is to introduce uniform international rules for determining the law applicable to maintenance obligations. Over 30 States are currently bound by the Protocol.

Transnational Litigation and Apostille

1961 Apostille Convention

The *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention) facilitates the circulation and use of public documents abroad by abolishing the requirement of diplomatic or consular legalisation. Traditionally, the authentication of foreign public documents is a time-consuming and often costly process, which can involve multiple steps in the State where the document was issued and the State where it is to be produced (“chain of legalisation”). The Apostille Convention abolishes this cumbersome process and replaces it with a single formality: the issuance of an authentication certificate, called an “Apostille”, by an authority designated by the Contracting Party in which the underlying public document originated. While an Apostille produces exactly the same effect as the legalisation chain, the process is much simpler and far more efficient; it saves time, money, and resources for both the applicants and consular officials.

The Convention currently has over 120 Contracting Parties, making it the most widely ratified/acceded to of all HCCH Conventions. It is also the most used HCCH Convention, with millions of Apostilles issued around the world every year.

1965 Service and 1970 Evidence Conventions

The *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* and *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Service and Evidence Conventions, respectively) establish effective cross-border cooperation mechanisms between authorities of Contracting Parties, aiming to reduce the time for the transmission of requests for service abroad or requests for the taking of evidence abroad in civil or commercial matters. The Conventions currently have over 75 and 60 Contracting Parties respectively. They are frequently used in practice and play a fundamental role in effective cross-border litigation.

1980 Access to Justice Convention

The *Convention of 25 October 1980 on International Access to Justice* (Access to Justice Convention) is intended to facilitate, for any nationals of a Contracting Party or persons habitually resident in a Contracting Party, access to justice in all other Contracting Parties. The Convention’s purpose is not to harmonise domestic laws, but rather to ensure that the mere status as a foreigner or the absence of residence or domicile in a State are not grounds for discrimination with regard to access to justice in that State. The Convention provides for non-discrimination with respect to legal aid (incl. the provision of legal advice), security for costs, copies of entries and decisions, physical detention, and safe-conduct. This is facilitated by a cooperation mechanism established between authorities of Contracting Parties. The Convention currently has over 25 Contracting Parties.

2005 Choice of Court and 2019 Judgments Conventions

The *Convention of 30 June 2005 on Choice of Court Agreements* (Choice of Court Convention) ensures that choice of court agreements between parties to international business transactions are upheld by Contracting Parties. Based on the business-friendly principle of party autonomy, including freedom of contract, the Convention provides legal certainty and predictability to its users. The three basic rules of the Convention (subject to well-defined exceptions) are: (i) a court chosen by the parties must hear the case, (ii) any court not chosen by the parties must decline to hear the case in favour of the chosen court, and (iii) a judgment rendered by the chosen court must be recognised and enforced in other Contracting Parties.

The Convention offers a real alternative to arbitration, in particular for small and medium enterprises for which arbitration is often too expensive. Over 30 States are currently bound by the Convention.

The *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (Judgments Convention) lays down a set of commonly accepted rules on recognition and enforcement of foreign judgments in civil or commercial matters. By defining the criteria and grounds for refusal for recognition and enforcement, the Judgments Convention aims to promote the circulation of certain civil or commercial judgments among its Contracting Parties. In doing so, the Convention enhances the practical effectiveness of judgments and provides successful parties with better prospects of obtaining meaningful relief. It does so by reducing timeframes and costs related to recognition and enforcement, as well as the risks inherent in cross-border dealings. The Convention aims to enable effective access to justice and facilitate rule-based multilateral trade, investment, and mobility. The Convention will enter into force in September 2023.

International Commercial and Financial Law

1985 Trusts Convention

The *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* (Trusts Convention) specifies the law applicable to trusts and governs their recognition in Contracting Parties. The Convention only applies to express trusts created voluntarily and evidenced in writing. It does not cover oral trusts, resulting trusts, constructive trusts, statutory trusts, or trusts created by judicial order. Contracting Parties are free to extend the application of the Convention to other forms of trusts, such as those declared by judicial decision. The Convention is based on the principle of party autonomy by giving the settlor the possibility of choosing the applicable law. The Convention currently has 14 Contracting Parties.

2006 Securities Convention

The *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (Securities Convention) establishes uniform conflict of laws rules suited to the reality of how securities are held and transferred (*i.e.*, by electronic book-entry debits and credits to securities accounts). The Convention determines the law governing the perfection, priority, and other effects of transfers of intermediated securities. The Convention's primary rule is based on the relationship between an account holder and its intermediary: it gives effect to the express agreement between the parties to an account on the law governing all the issues falling within the scope of the Convention. In doing so, the Convention provides certainty as to the law applicable to clearance, settlement, and secured credit transactions which cross national borders, markedly improves transactional efficiencies in global securities markets, reduces systemic risk in cross-border transactions and intermediary holdings, and facilitates cross-border capital flows. The Convention currently has 3 Contracting Parties.

2015 Principles on Choice of Law in International Commercial Contracts

The *Principles on Choice of Law in International Commercial Contracts* (Choice of Law Principles) is a soft law instrument designed to promote party autonomy in international commercial contracts. By acknowledging that parties to a contract are best positioned to determine the set of legal norms governing their transactions, the Principles offer the legal certainty and predictability necessary for effective cross-border trade and commerce. The Principles serve as an international code of best practice or “blueprint” for party autonomy in international commercial contracts, providing inspiration and guidance for legislators, judiciaries, arbitrators, and practitioners.