

Switzerland accedes to the HCCH Choice of Court Convention and files a declaration on non-exclusive choice of court agreements

Yesterday (18-09-2024), Switzerland acceded to the HCCH Choice of Court Convention and filed a declaration under Article 22 with respect to non-exclusive choice of court agreements. This is particularly noteworthy because this is the first time a declaration under Article 22 of the Choice of Court Convention has been filed. The Choice of Court Convention will enter into force for Switzerland on 1 January 2025.

Unlike the European Union and other Contracting States, Switzerland did not file a declaration under Article 21 of this Convention (declarations with respect to specific matters, *e.g.* insurance contracts).

The Swiss declaration indicates the following:

Switzerland

18-09-2024

In accordance with Article 22, paragraph 1, Switzerland declares that its courts will recognise and enforce judgments given by courts of other Contracting States designated in a choice of court agreement concluded by two or more parties that meets the requirements of Article 3, paragraph c), and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, a court or courts of one or more Contracting States (a non-exclusive choice of court agreement).

While this is a significant development, Article 22 of the Choice of Court Convention only applies in a reciprocal manner and only with regard to the

provisions of Chapter III (Arts. 8-15). In other words, and as indicated in the Explanatory Report written by Trevor Hartley and Masato Dogauchi: “For Article 22 to operate, the State of origin and the State in which recognition or enforcement is sought must both be Contracting States and they must both have made a declaration under Article 22” (paragraph 241). The Explanatory Report also specifies that “[b]oth declarations must be in force when recognition is sought; otherwise there is no reciprocity” (paragraph 255).

Moreover, and in addition to reciprocity, Article 22(2) of this Convention sets out a series of conditions that the non-exclusive choice of court agreements must satisfy.

The seminal book of Ronald A. Brand and Paul M. Herrup further clarifies “A choice of court agreement will be a ‘non-exclusive choice of court agreement’ for purposes of recognition and enforcement under Article 22 if it designates ‘a court or courts of one or more Contracting States’. This definition contrasts with the final element of exclusivity in Article 3(a) [...]” (see, *The 2005 Hague Convention on Choice of Court Agreements: Commentary and documents* (Cambridge: Cambridge University Press, 2008, 154).

Unless another Contracting State files a declaration under Article 22, the recognition and enforcement of non-exclusive choice of court agreements under this article will sadly not yet see the light of day. In any case, this is very interesting development, which may perhaps influence other existing or future Contracting States to do the same.

The HCCH news item is available [here](#).