

Draft Uniform Convention on Choice of Court Agreements Act

Interpretation

1. (1) The following definitions apply in this Act.

“Convention” means the *Hague Convention on Choice of Court Agreements* set out in the schedule. (*Convention*)

Comment: *This is a standard provision in uniform acts implementing international conventions. For previous examples, reference may be made to subsection 1(2) of the Uniform International Commercial Arbitration Act and subsection 1(2) of the Settlement of International Investments Disputes Act.*

“declaration” means a declaration made by Canada under the Convention with respect to (*name of province or territory*). (*déclaration*)

Comment: *Articles 19, 20, 21, 22, 26, 28, 29 and 30 of the Convention provide for the deposit of declarations by contracting States:*

Article 19 permits Canada to declare that its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if the only connection between Canada and the parties or the dispute is the selection of Canada as the forum for dispute resolution. Canada need not make this declaration because its courts are already permitted to hear such disputes under domestic law. Moreover, failure to make this declaration will not detrimentally affect Canadian courts.

Article 20 permits Canada to declare that its courts may refuse to recognize or enforce a judgment given by a court of another Contracting State if the parties were resident in that state and the relationship of the parties and all other elements relevant to the dispute, other than their choice of court, were connected only with the other Contracting State. Since Article 20 reflects existing common and civil law in Canada, no declaration is necessary.

Article 21 permits Canada to declare that it will not apply this Convention to specific matters. The declaration shall not be broader than necessary and the excluded matter must be clearly and precisely defined. Those provinces that wish to avoid the enforcement of judgments against certain domestic industries should make this declaration. Other provinces will derive no benefit from doing so.

Article 22 allows Canada to declare that its courts will enforce judgments given by courts of other Contracting States as designated by non-exclusive choice of court agreements, in addition to those designated by exclusive choice of court agreements. Canada should make this declaration since it may assist with the enforcement of Canadian judgments in foreign states where they would otherwise not be enforced.

Article 26(5) indicates that this Convention shall not affect the application by Canada of another treaty which, in relation to a specific matter, governs jurisdiction or the recognition or enforcement of judgments, even if it is concluded after this Convention, but only if Canada has made a declaration in respect of the treaty under this article.

Since none of Canada's current treaty commitments conflict with the Convention, this declaration is unnecessary.

Article 28 is a standard provision in private law conventions. It allows federal States to identify by declaration the territorial units to which the convention is to extend. Canada will make declarations pursuant to Article 28 upon the request of provinces and territories that adopt implementing legislation.

Articles 29 and 30, which allow a Regional Economic Integration Organisation to sign, accept, approve or accede to this Convention and have the rights and obligations of a Contracting State, are not relevant to Canada.

(2) Unless a contrary intention appears, words and expressions used in this Act have the same meaning as in the Convention.

(3) In interpreting this Act and the Convention, recourse may be had to the Explanatory Report on the 2005 Hague Choice of Court Agreements Convention.

Comment: *The Explanatory Report was prepared by Trevor Hartley & Masato Dogauchi and is available on the Hague Conference website at <http://www.hcch.net/upload/exp137e.pdf>. This supplementary interpretive source conforms to the interpretive sources sanctioned by Article 32 of the Vienna Convention on the Law of Treaties, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to these sources is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that "It would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in Canada (*Attorney General*) v. *Ward*, [1993] 2 S.C.R. 689."*

For an example of a similar provision, reference may be made to subsections 14(1) and (2) of the Uniform International Commercial Arbitration Act.

To facilitate ease of access to the Explanatory Report referred to in paragraph (3), enacting jurisdictions may wish to include reference in their Gazettes or other appropriate governmental organ to the Hague Conference web address from which it may be downloaded.

The list in paragraph (3) is not intended to be exhaustive. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.

Purpose

2. The purpose of this Act is to implement the Convention.

Comment:

Publication

3. A notice shall be published in (name of publication) of the day on which the Convention comes into force, or a declaration or withdrawal of a declaration takes effect, in (name of province or territory).

Force of law

4. Subject to any declaration that is in force, the Convention has the force of law during the period that it is, by its terms, in force in (name of province or territory).

Comment: *This Convention is given force of law domestically only from the date the Convention comes into force at the international level for Canada in the jurisdictions declared pursuant to Article 28. That date is the first day of the month following the expiration of three months (i) after the deposit by Canada of the second instrument of ratification, acceptance, approval or accession referred to in article 31, or; (ii) in the case of Canada's subsequent ratification or accession to the Convention, after the deposit of its instrument of ratification or accession; or (iii) thereafter, for a province or territory to which the Convention has been extended in accordance with Article 28(1), after the notification of the declaration referred to in that Article.*

The ULCC Uniform International Interests in Mobile Equipment Act (Aircraft Equipment) excluded specific (final) provisions from having the force of law. However, the preferred approach has been to give the force of law to all the provisions of a Convention. This approach eliminates the risk of inadvertently overlooking provisions or omitting substantive provisions. To the extent that the final provisions of the Convention are not substantive but are binding as to States on an international level, they would produce no legal effect in provinces or territories in any event.

Inconsistent laws

5. If a provision of this Act, or a provision of the Convention that is given the force of law by section 6, is inconsistent with any other Act, the provision prevails over the other Act to the extent of the inconsistency.

Comment: *The Act and Convention need to prevail over inconsistent provisions in other Acts to ensure that Canada is in conformity with its international obligations. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other Acts with which this Act or the Convention might potentially be inconsistent, those other Acts should be amended to give precedence to this Act and the Convention.*

Binding on Crown

6. This Act is binding on the Crown in right of (name of province or territory).

Comment: *The Convention is drafted on the assumption that it applies to all exclusive international choice of court agreements concluded in [civil or] commercial matters, whether or not they involve governmental entities. Section 6 merely confirms this. Of course, if a jurisdiction's interpretation legislation already provides that the Crown is bound unless otherwise stated in the particular act, there is no need to include it.*

Coming into force

7. This Act comes into force on (_____).

OR

7. The provisions of this Act come into force on a day or days to be fixed by (_____).

Comment: *There is a need to co-ordinate the entry into force of the Convention at the international level, the coming into force of domestic implementing legislation, and giving the Convention force of law. A provision in the implementing legislation stating that the Act comes into force when the Convention enters into force for enacting jurisdictions is not recommended since the actual date is not transparent on the face of the legislation. Accordingly, it is recommended that the legislation implementing the Convention state that it comes into force on Royal Assent or similar means. Enacting jurisdictions will need to communicate with Justice Canada officials to coordinate dates.*

Schedule

Convention on Choice of Court Agreements