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NEWSLETTER

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Civil Procedure

This newsletter informs on two legislative projects in the field of civil procedure: The revision of the Civil Procedure Code (CPC) was adopted in mid-March, and Switzerland plans to join the Hague Convention on Choice of Court Agreements (HCCCA).

REVISION OF CIVIL PROCEDURE CODE

The National Council and the Council of States were able to overcome their last differences and the final wording of the revised CPC was adopted on 17 March 2023 (*link*). We have already described the main aspects of the revision in our newsletter of November 2022 (*link*). Parliament has since then clarified that English can only be chosen as the language of the proceedings in international litigation and not in the context of domestic commercial disputes. The new law is expected to enter into force on 1 January 2025.

Still pending in the parliament is the bill on collective redress.

HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

The HCCCA governs jurisdiction in civil and commercial matters and the recognition of judgments if the parties have agreed on jurisdiction. As it currently stands, Switzerland is highly likely to join the HCCCA. The legislative consultation process is ongoing, and the Federal Council's Message to the Parliament is expected for early summer 2023. The key aspects in a nutshell:

Goals of the HCCCA

The HCCCA aims to increase legal certainty in international litigation by contributing to the efficient resolution of disputes through unified rules on choice of court agreements. The same goal is served by HCCCA's requirement that all member states must recognise and enforce the decision of the court chosen by the parties. Legal disputes should thereby become more predictable.

The HCCCA offers an alternative to arbitration, for which a uniform set of rules already exists: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC).

For Switzerland, the HCCCA is further interesting because it increases its attractiveness as a jurisdiction for international litigation, complementary to the establishment of specialised courts for international commercial disputes within the framework of the revised CPC. For such international commercial courts to be attractive, their judgments must be recognisable and enforceable in other jurisdictions.

Member States of the HCCCA

At present, the HCCCA is in force in the European Union, the United Kingdom, Mexico, Singapore and Montenegro. Other states, including the US, China and Israel, have signed the HCCCA, but not yet ratified it.

The territorial scope of the HCCCA is thus (still) limited, but it is likely to become more important upon ratification by further states.

Key provisions of HCCCA

1. Scope of application

The HCCCA is applicable if the parties agree on an exclusive place of jurisdiction in an international matter. It is sufficient that a court of a contracting state is chosen; the domicile or seat of the parties is irrelevant.

The HCCCA applies to civil and commercial matters, excluding, among others, employment disputes, tort claims and consumer disputes.

2. Exclusive jurisdiction of chosen court

A choice of court agreement is deemed to be «exclusive» in the meaning of the HCCCA if a specific court (or gene-

rally the courts of a contracting state) is chosen and the jurisdiction of all other courts excluded.

Pursuant to the HCCCA, an agreement on jurisdiction is binding for all courts of the contracting states. The chosen court must decide the dispute submitted to it and cannot decline jurisdiction (e.g. based on the doctrine of *forum non conveniens*). In contrast to the Lugano Convention (LugC) or the Swiss Private International Law Act (PILA), the objection of lis pendens is not available under the HCCCA. Conversely, any other court of a member states seized with the matter must stay the proceedings or dismiss the action as inadmissible.

3. Recognition and enforcement

The judgment of a validly chosen court must be recognised and enforced in all other member states. Similar to the NYC, recognition and enforcement may only be refused for limited reasons, namely if the agreement is null and void under the lex fori or because it violates public policy (*ordre public*). The decision may not be reviewed on the merits (prohibition of *révision au fond*).

In view of a possible ratification of the HCCCA by the US, it is noteworthy that recognition and enforcement can be refused in connection with punitive damages. However, from a Swiss perspective, such judgments violate the ordre public anyway.

Relationship to LugC and PILA

Choice of court agreements in international litigation are not only dealt with by the HCCCA, but also governed by Art. 23 LugC and Art. 5 PILA.

At first glance, the relationship to these provisions seems clear: as an international treaty, the HCCCA takes precedence over the PILA, and the HCCCA itself expressly gives precedence to the LugC.

On closer examination, problems may occur. For example, the HCCCA does not set forth how proceedings shall be coordinated if a party from a non-LugC member state brings an action before the court competent under the HCCCA but the matter is already pending before another court in a LugC member state.

Outlook

Switzerland's ratification of the HCCCA would further unify the legal framework on jurisdiction of courts in international litigation. It would also become easier to have court decisions recognized and enforced. This would improve the effectiveness and enforceability of choice of court agreements and thus increase legal certainty. This is to be welcomed. That Switzerland joins the HCCCA is also important for the success of the planned specialised courts for international commercial disputes.

Until ratification by further states, the practical significance of the HCCCA remains limited though. Nevertheless, legal uncertainties as a result of the Brexit could already be eliminated today.

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