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Important News on Jurisdiction Clauses: The Hague Choice of Court Convention applies to Switzerland:

The Hague Choice of Court Convention that has been applicable to the member states of the European Union, the United Kingdom of Great Britain and Northern Ireland, Singapore and further states already, has entered into force in Switzerland on 1 January 2025. This newsletter provides you with the essential information about the Hague Choice of Court Convention, its practical effects, and recommended actions for your choice of court agreements.

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What you should know about the Hague Choice of Court Convention

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As of 1 January 2025, the Hague Convention of 30 June 2005 on Choice of Court Agreements (the **Hague Convention**) is in force in Switzerland. This landmark step enhances the predictability of cross-border dispute resolution by ensuring recognition and enforcement of judgments rendered under exclusive jurisdiction clauses. Businesses should review existing jurisdiction clauses in their agreements and consider adapting new clauses to fully benefit from the Hague Convention's framework.

A. Why is the Hague Convention relevant?

The Hague Convention governs both the jurisdiction of agreed courts in international commercial disputes and the cross-border recognition and enforcement of judgments rendered by a court of a contracting state designated in such an agreement. Its primary objective is to recognize and enforce exclusive choice of court agreements. The Hague Convention therefore directly impacts how cross-border litigation involving Swiss courts is being conducted and its entry into force marks a significant milestone in international commercial dispute resolution.

To date, the Hague Convention is in force in 38 contracting states, including the member states of the European Union, the United Kingdom of Great Britain and Northern Ireland (the **United Kingdom**), Singapore and Mexico (cf. the complete list at HCCH | #37 - Status table). The Hague Convention is especially relevant in relationships with countries which are not a party to the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the **Lugano Convention**), such as most notably the United Kingdom following Brexit.

B. When does the Hague Convention apply?

As a matter of principle, the Hague Convention applies to **exclusive choice of court agreements in international cases**, whether concluded in writing or by any other means of communication that renders information accessible for subsequent reference (e.g. an email exchange). The Hague Convention applies in **civil or commercial matters**, but certain matters are excluded from its scope, such as employment, family and succession law, insolvency, antitrust matters, arbitration and related proceedings.

Furthermore, interim measures of protection, such as freezing orders or preventive injunctions (such as an order to preventing the defendant from infringing the claimant's rights), are not governed by the Hague Convention. The Hague Convention neither requires nor precludes a court of a contracting state from granting, refusing or terminating interim measures of protection nor does it require other contracting states to recognise or enforce such decisions.

For a choice of court agreement to be deemed exclusive, the parties must have referred disputes to the courts of a contracting state in general (e.g. "the courts of Switzerland"), to a specific court in a contracting state (e.g. "the courts of Zurich, Switzerland") or to two or more specific courts in the same contracting state (e.g. "at the claimant's choice either the District Court of Zug or the District Court of Geneva"). Unless the parties have expressly provided otherwise, the jurisdiction of all other courts is deemed to be excluded.

The Hague Convention applies only to

exclusive choice of court agreements **concluded after its entry into force in the state of the chosen court**. Accordingly, the Hague Convention applies only to jurisdiction clauses designating Swiss courts agreed after 1 January 2025. Similarly, Swiss courts seized with the recognition and enforcement of foreign judgments after 1 January 2025 will apply the Hague Convention if it was in force in the state of the chosen court at the time the choice of court agreement was concluded.

C. Principle and Exceptions regarding International Jurisdiction

At the heart of the Hague Convention lies the principle that **only the court designated in the choice of court agreement shall hear the case**, and any other court to which proceedings are brought shall refuse to hear them.

This represents a significant advance in the dealing with parallel proceedings in international civil procedure law. For example, the Lugano Convention generally gives precedence to the court first seized and thereby allows a party to bring an action before a court of another contracting state contrary to a choice of court agreement, thereby thwarting the proceedings before the agreed court. In contrast, the Hague Convention generally excludes such parallel proceedings. It remains to be seen how the courts will tackle the issue when both the Hague Convention and the Lugano Convention apply. According to the wording of the Hague Convention, the Lugano Convention should, in principle, take precedence over the Hague Convention.

Moreover, in order to give effect to exceptional situations, the Hague Convention provides for **various exceptions** to its core principle regarding both the chosen and the not chosen court. In particular, the Hague Convention does not affect local rules that determine a court's jurisdiction based on the subject or the value of the claim. If, for example, the parties designate the Commercial Court of Zurich even though the dispute does not concern the commercial activity of at least one party, the Hague Convention does not oblige the Commercial Court of Zurich to take the case.

D. What does the Hague Convention provide for regarding Recognition and Enforcement?

Further key provisions of the Hague Convention provide that **the judgment of the chosen court will be recognized and enforced in the other contracting states**. A court seized with the recognition and enforcement therefore must not review the judgment on the merits and is bound by the findings of fact on which the court of origin based its jurisdiction.

Recognition or enforcement **may be refused only on the grounds specified in the Hague Convention**. Many of them are known from the Lugano Convention, such as the late or improper service of the document which instituted the proceedings, violation of substantive or procedural public policy, and incompatibility with another judgment. As a globally conceived convention, however, the Hague Convention falls short of the European standard. Recognition and enforcement may also be refused if (i) the choice of court agreement was invalid under the law of the state of the agreed court, (ii) one of the parties lacked the capacity to conclude the agreement under the law of the requested state, (iii) the decision was obtained through procedural fraud (e.g. intentional service to a false address or bribery of the judge or a witness), or (iv) to the extent the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.

To further promote the principle of recognition and enforcement, Switzerland is the first state to have filed a declaration under article 22, extending recognition and enforcement also to judgments based on non-exclusive choice of court agreements. However, since this mechanism requires reciprocity, the practical effect remains limited for now.

E. Conclusion and Recommendations

The entry into force of the Hague Convention in Switzerland closes a gap of legal uncertainty in particular in the relations with the United Kingdom. Moreover, it is a further step in enhancing the predictability and enforceability of international choice of court agreements. This move strengthens Switzerland's commitment to efficient dispute resolution, reinforcing its status as a global business center.

To ensure the applicability of the Hague Convention and its advantages, existing choice of court agreements in favour of Swiss state courts that pre-date 1 January 2025 should be revisited and potentially amended and restated. Furthermore, when negotiating and drafting choice of court agreements, it is advisable to consider including a jurisdiction clause which takes into account the Hague Convention and, in particular, to avoid clauses that entitle one or more parties to bring their claims in jurisdictions other than the agreed one because such clauses may not be viewed as "exclusive" clauses and may thus not benefit from the advantages offered by the Hague Convention.

Walder Wyss' Litigation team regularly advises on cross-border jurisdiction and enforcement matters and can assist in reviewing your contracts under the new Hague Convention.