



Saudi Arabia to Join Hague Conference on Private International Law: A Move Toward International Standards?

On July 25, 2016, the Saudi Arabian cabinet resolved to become a member state of the Hague Conference on Private International Law (“HCCH”).¹ Formal signature and the internal ratification is still outstanding but is expected to occur in due course. When it does, the Kingdom will become the 82nd member of the organization.

The HCCH is an intergovernmental body that promotes and administers multilateral efforts for the “progressive unification” of private international law (also referred to as international conflicts of law). Since the HCCH’s inception in 1893, these efforts have led to more than 40 treaties governing cross-border issues such as the jurisdiction of courts, service of evidence and taking of evidence across borders, and the recognition and enforcement of judgments and legal proceedings in a wide range of areas—from commercial law and banking law to child protection to matters of marriage and personal status. The ultimate goal of the organization is to work toward a world in which, despite the differences between legal systems, individuals as well as companies enjoy a high degree of legal security in their cross-border relations.

Accession to HCCH’s conventions is not mandatory for its members, and even non-member states are free

to accede to HCCH’s conventions. This movement is, however, a step forward for the Kingdom. To date, it has not acceded to any of the Hague Conventions—despite the relatively broad acceptance around the world of at least some of these conventions. If its decision to join the rolls of HCCH membership is any indication, improvements in cross-border dispute resolution and other cross-border legal topics in the Kingdom may be on the horizon. For instance:

- **Enabling foreign judicial authorities to serve process and deliver litigation-related documents to respondents** domiciled in Saudi Arabia would be a notable improvement. The 1965 Hague Service Convention,² signed by 68 states since its inception, facilitates service of process of legal documents from one state to another without the need for idiosyncratic or parochial methods or the use of diplomatic channels. The Kingdom has long taken a protective stance toward its citizens and residents in the past, so accession to this Convention would bring it in line with its trading partners.
- **Securing evidence across borders would provide a more effective dispute resolution process** in the Kingdom’s courts once litigation is noticed and

begun. To this end, the Hague Evidence Convention of 1970³ allows transmission of letters of request from courts in one signatory state (where the evidence is sought) to courts in another signatory state (where the evidence is located) without recourse to diplomatic channels. This treaty, too, has gained general acceptance around the world, with 58 current signatories. Again, while this would open up citizens of the Kingdom to requests from foreign courts, it would also allow those citizens to seek the same evidence from abroad when they litigate at home.

- **Securing the enforceability of foreign judgments against parties domiciled in the Kingdom**, whenever they have contractually chosen a foreign court for litigation, would also bring about more legal certainty. While this has been an issue in the past, it appears that, following legislative reforms as well as recent court cases, at least straightforward foreign judgments relating to payment claims are now being enforced in the Kingdom without major issues. Thus, acceding to the very recent Hague Choice of Courts Convention⁴—which requires enforcement of choice of forum clauses and the recognition of judgments founded thereon—may be a realistic step that the Kingdom could take without significant impacts or challenges.⁵
- **The simplification of legalization requirements for foreign documents through an apostille procedure** would also be a beneficial step ahead. Saudi Arabian legal practice relies heavily on certified documents. Being able to have a designated authority in the country of origin certify documents by way of apostille for use in Saudi Arabia as provided in the Hague Apostille Convention,⁶ instead of having to go through Saudi consular offices, would greatly speed up or simplify the process, particularly in the areas of cross-border M&A, foreign direct investment, or immigration, just to name a few.

This decision by the Kingdom to become a member state of the HCCH signifies another promising trend—that of promoting the rule of law and the free flow of capital investment to and from its territory. Foreign companies need assurances that due process will follow them into the Kingdom, and outbound Saudi investors want to be sure that the same applies

when they go abroad. The assurance of a neutral forum to adjudicate private disputes through a contractual choice of court, the assurance of serving legal process to notice the adjudication of disputes, and the ability to take evidence and thereby ensure that that adjudication is open and transparent are three bedrock principles that can be achieved through simple assent to existing multilateral treaties. These are the fundamentals of international due process, and assent to these international treaties would facilitate foreign investment in the Kingdom, and—at the same time—enable outbound Saudi investors to more easily seek redress when disputes arise. Such assent comes at little cost—these treaties merely provide private interests with private rights, and they do not (in themselves) engender the possibility of state liability.

To be sure, it is still premature to assess the practical implication of Saudi Arabia's move to join the HCCH. At the very least, the intended accession can be seen as a symbolic step demonstrating the Kingdom's willingness to consider elevating its domestic conflicts of law standards to international levels and enter into related discussions. Whether and to what extent Saudi Arabia is willing to move forward by actually acceding to HCCH's conventions is an open question. Even if the Kingdom is willing to be bound by international private law conventions, public policy issues and related exceptions and reservations are expected to continue to play a significant role in order to conserve the fundamental *Shari'ah* law considerations that animate the broader legal landscape of the Kingdom. It remains to be seen how Saudi Arabia will strike a balance between these two conflicting policy considerations going forward.

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com/contactus/.

Marc O. Peisert
Saudi Arabia
+966.12.616.3939
mopeisert@jonesday.com

Charles T. Kotuby Jr.
Washington
+1.202.879.5409
ctkotubyjr@jonesday.com

Endnotes

- 1 “Cabinet Approves Kingdom becoming member of the Hague Conference,” *Arab News*, July 26, 2016, p. 2.
- 2 [Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters](#), Nov. 15, 1965, T.I.A.S. 6638, 658 U.N.T.S. 163.
- 3 [Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters](#), Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. 7444, 847, U.N.T.S. 231.
- 4 [Convention on Choice of Court Agreements](#), June 30, 2005, 44 I.L.M. 1294 (2005).
- 5 The Kingdom has been a signatory of the UNCITRAL 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dealing with the choice of arbitration venue and the recognition of arbitral awards since 1994, so that an agreement on similar principles for litigation proceedings would be a logical step.
- 6 [Convention Abolishing the Requirement of Legalisation for Foreign Public Documents](#), Oct. 5, 1961, 527 U.N.T.S. 189, T.I.A.S. 10072, 20 I.L.M. 1405, 1407.

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.