



**HCCH**

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# C<sup>COVID</sup>VID - 19 Toolkit

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The COVID-19 pandemic has affected us all.

As the Secretary General emphasised in his [recent video message](#), the Permanent Bureau (PB) of the HCCH continues to operate effectively throughout the ongoing crisis.

It is in this spirit that we, at the PB, have developed this **COVID-19 Toolkit** – a compilation of relevant guidance and resources designed to assist users of the HCCH Conventions and other instruments in these challenging times and beyond.

With international borders closed and containment measures in place, cross-border movement of people and goods is subject to unprecedented restrictions. In many jurisdictions, children and families remain stranded. Access to government services remains limited. Legal procedures have been delayed or suspended. Flows of goods have been reduced or restricted and businesses left unable to fulfil contractual obligations. However, even as we witness a surge in the use of technology to assist in these uncertain times, the fact remains that questions of private international law abound.

Various HCCH Conventions and their supporting documentation provide valuable assistance as we navigate this crisis together and adjust to the new reality in which we find ourselves – a reality which will undoubtedly continue to have an impact on our everyday lives long after COVID-19.

The Toolkit is intended to complement the wealth of additional information available on the [HCCH website](#), including the full text of each Convention, explanatory documentation, as well as contact details and practical information specific to each Contracting Party.

The Permanent Bureau

The HCCH COVID-19 Toolkit is divided into **two main categories** and covers the topics listed below. Click on a specific topic to jump to that section of the Toolkit.

## **International Child Protection and Family Matters**



**[Child Abduction and Child Protection](#)**

**[Child Support and Family Maintenance](#)**

**[Intercountry Adoption](#)**

## **International Legal Cooperation, Litigation and Dispute Resolution**



**[Apostilles \(Authentication of Public Documents\)](#)**

**[Service of Documents and Taking of Evidence](#)**

**[International Commercial Contracts](#)**

While much of the information provided in this Toolkit is simplified for ease of reference, readers are encouraged to check the Status Table for the relevant Convention on the **[HCCH website](#)**, to ensure that it has entered into force between the States concerned and to verify any specific conditions in relation to its applicability, including declarations and reservations.

## Child Abduction and Child Protection

[HCCH 1980 Child Abduction Convention](#)

[HCCH 1996 Child Protection Convention](#)



### The “Grave Risk Exception” to Prompt Return

Article 13(1)(b) of the 1980 Child Abduction Convention sets out the “grave risk exception”, one of the limited exceptions to the return of a wrongfully removed or retained child. The current pandemic means that the grave risk exception is now, more than ever, likely to be raised to oppose the return of a child to his / her State of habitual residence. Courts, Central Authorities, practitioners as well as individuals faced with an international child abduction situation will find this Guide to Good Practice a helpful resource to navigate the application of Article 13(1)(b) in these exceptional circumstances.

### Enforcement of Return Orders

The current restrictions on international travel pose considerable challenges to the enforcement of return orders under the Convention and it is therefore crucial that the safe return of children can be guaranteed, even in these exceptional circumstances. This Guide to Good Practice assists with the implementation of an efficient system to enforce return orders under the 1980 Child Abduction Convention in the best interests of the child concerned.

### Mediation

This Guide to Good Practice promotes good practices in mediation and other processes to resolve international family disputes which fall within the scope of the 1980 Child Abduction Convention, in particular, the possibility to arrange long-distance mediation where in-person mediation is not practicable, a highly relevant alternative in the current context of physical distancing and travel restrictions.



### **Transfrontier Contact Concerning Children**

The use of modern means of communications to ensure the continued right of a child to maintain personal relations with its parents where direct contact is not practicable, such as in current circumstances, is addressed in these General Principles and Guide to Good Practice.

### **Handbook on the Child Protection Convention**

Times of crisis such as these potentially increase the vulnerability of children in a wide range of cross-border situations. This Handbook clarifies how the 1996 Child Protection Convention operates in practice and how its mechanisms can help to ensure the protection of such children through the use of plain language, relevant and comprehensive case examples and simple flowcharts.

### **Cross-Border Communications between Judges**

As under normal circumstances, members of the **International Hague Network of Judges** can undertake **direct judicial communications** in the context of the HCCH 1980 Child Abduction and 1996 Child Protection Conventions, or in relation to other child protection or family law matters.

## Child Support and Family Maintenance

### [HCCH 2007 Child Support Convention](#)



#### [Operational Status of Child Support Authorities](#)

This information has been gathered by the German Institute for Youth Human Services and Family Law (DIJuF) (in English) concerning the level of operational status of child support authorities in some Contracting Parties to the 2007 HCCH Child Support Convention.

#### **Handling Child Support Cases Securely: [iSupport](#)**

A number of Contracting Parties to the 2007 Child Support Convention are currently working towards the implementation of iSupport, the electronic case management and secure communication system under the 2007 Convention. While iSupport is not yet fully operational, it will ultimately help to secure the continued transfer of child support payments to those in need during similarly challenging circumstances. It will allow case workers to deal with cross-border cases of child support recovery in a complete electronic environment in accordance with the processes described in the [Practical Handbook for Caseworkers under the 2007 Child Support Convention](#).

## Intercountry Adoption

### [HCCH 1993 Adoption Convention](#)



In an emergency situation, Central Authorities, other competent authorities and bodies should increase their efforts to support and properly inform children, birth families and (prospective) adoptive families about the situation and the measures taken. In the current circumstances, technology may be particularly useful to properly communicate and coordinate work effectively.

An emergency situation should not be a reason for bypassing essential adoption safeguards or cutting short required procedures. When the work of child protection services, courts and other competent authorities is impeded by a crisis, the risk of a potentially “unsafe” adoption is even greater. Therefore, in such situations the protection of the overall rights of the child should always be prioritised over the adoption itself.

Where an adoption decision has already been issued by a competent authority, in due form and respecting all safeguards and relevant procedures, in the current circumstances it is possible that certain administrative procedures (in particular those relating to travel documents) remain to be completed. In these unique cases, both Central Authorities could consider exceptionally allowing the child to travel together with the adoptive parents to the receiving State. However, prior to their joint authorisation of the departure, both Central Authorities should verify the status and identity of the child and determine that the timing of the travel is justified and it can take place safely.

The HCCH has a number of resources available which explain the key features of the 1993 Adoption Convention in more detail, the most relevant of which include the recent [Brochure on Protecting Children in Intercountry Adoption](#) and [Guide to Good Practice on the Adoption Convention](#).

## Apostille (Authentication of Public Documents)



### HCCH 1961 Apostille Convention

#### Electronic Authentication of Public Documents (e-Apostilles)

While cross-border mobility may be limited during the global COVID-19 crisis, public documents still need to be authenticated and Apostilles thus continue to be issued by many Competent Authorities around the world. The volume may be lower, yet it is important that Competent Authorities maintain capacity to issue Apostilles. The HCCH's [electronic Apostille Programme \(e-APP\)](#) helps keep things moving in this respect.



For over a decade, the e-APP has supported the electronic issuance and verification of Apostilles under the Convention. While not all Competent Authorities have yet implemented the e-APP (which also includes the operation of e-Registers to verify Apostilles), in times of restricted mobility it is useful to know that such technological solutions are available. An introduction to the e-APP can be found in the [Apostille Handbook](#) (see Part 6).

#### Who issues e-Apostilles?

This [Implementation Chart](#) identifies which Competent Authorities have implemented one or both components of the e-APP (i.e. e-Apostilles or e-Registers). A [list of operational e-Registers](#) provides the links to the registers in which an Apostille from those authorities can be verified.



### Key Publications

For more information on the operation of the Apostille Convention, the quick-reference guide [The ABCs of Apostilles](#) provides succinct answers to frequently asked questions about Apostilles, their issuance, verification, use and effect. In addition, the more comprehensive guidance in the [Apostille Handbook](#) may prove particularly useful in resolving novel questions that arise due to the current circumstances.

### Information for Specific Countries / Authorities

Individuals or entities seeking to have a public document issued with an Apostille are encouraged to consult the [practical and contact information](#) for the place where their public document was issued, so as to identify the authority that is competent to issue an Apostille. In these exceptional circumstances, some jurisdictions have implemented workarounds or adopted emergency measures to ensure that public documents can be authenticated remotely, so users are advised to contact the relevant Competent Authority for more information.

## Service of Documents and Taking of Evidence



[HCCH 1965 Service Convention](#)

[HCCH 1970 Evidence Convention](#)

### [Taking Evidence by Video-Link](#)

The taking of evidence remotely by video-link is of particular relevance in the current circumstances. This Guide to Good Practice seeks to equip its audience with tools to overcome the challenges associated with taking evidence by videoconference under the Evidence Convention. Analysing latest developments, with additional references to internal law and other international agreements, this Guide outlines good practices to be followed and synthesises the information provided by Contracting Parties in their respective [Country Profiles](#), submitted in response to the [Questionnaire](#) on the topic. This publication also complements the Evidence Handbook (listed below) and has been made available to the general public free of charge in light of the COVID-19 pandemic.

### [Service Handbook and Evidence Handbook](#)

Under the Service and Evidence Conventions, the use of technology is encouraged in both the transmission and execution of requests, where appropriate and subject to domestic law requirements. Both Handbooks provide specific guidance in this respect. Electronic versions of these two publications are available for official use of authorities of HCCH Members and non-Member Contracting Parties to the Conventions, accessible via the Secure Portal of the HCCH website. Both publications are also [available for purchase by the general public](#).

### [HCCH a|Bridged: Service of Documents and IT](#)

The inaugural edition of *HCCH a|Bridged - Edition 2019* convened worldwide experts to discuss the challenges and opportunities presented by electronic and information technology in the context of the Service Convention. The full programme, as well as the session videos and accompanying presentations are available on the [HCCH website](#).

## International Commercial Contracts



The likely wave of cross-border disputes that will arise following the COVID-19 pandemic require consideration of how to minimise risks in the context of international business dealings, in particular since such occurrences make in-person dealing more challenging.

### HCCH 2005 Choice of Court Convention

#### **Agreement to Litigate a Commercial Dispute before a Designated Court (Choice of Court Agreements or Forum Selection Clauses)**

The **Choice of Court Convention** ensures that effect is given to an exclusive choice of court agreement between parties in relation to the court chosen to hear a dispute. The liberal formality requirement in the Convention is particularly useful in the current pandemic. It provides that an exclusive choice of court agreement must be concluded or documented in writing or by "any other means of communication which renders information accessible so as to be usable for subsequent reference" (Art. 3(c)). Thus, in times of crisis, parties can still choose the court that will deal with their disputes exclusively, by email or other electronic means, and the Convention will recognise the effectiveness of parties' choice of court agreements.

For disputes that occurred because of the pandemic or other crises (e.g. non-delivery of goods or late payment), the exclusive choice of court agreements would not automatically be invalidated solely on the basis that the contract itself is not valid (Art. 3(d)). The severability of the choice of court agreements helps to ensure the effectiveness of that choice even in times of uncertainty.



## Recognition and Enforcement of Judgments given by a Court designated in an Exclusive Choice of Court Agreement

Of particular relevance in the current circumstances is the fact that the **Choice of Court Convention** respects the three fundamental principles of electronic exchange of documents, namely, the principles of non-discrimination and functional equivalence between electronic communications and paper documents, and the principle of technological neutrality.

### **Online procedure in the State of origin**

*(subject to domestic law and available technological facilities)*

- The Convention can operate where the courts of the State of origin are able to issue complete and certified electronic copies of both the judgment and other necessary documents (Art. 13(2)). This means that, the judgment creditor need not go to the court in person.
- The court (including an officer of the court) of the State of origin can complete the **Recommended Form under the Choice of Court Convention** (Art. 13(3)) as an electronic document and provide it to the judgment creditor.

### **Online procedure in the State where recognition and enforcement is sought**

*(subject to domestic law and available technological facilities)*

- The Convention can operate where the courts of the requested State are able to process electronic submissions for recognition and enforcement of foreign judgments. This procedure is governed by the law of the requested State (Art. 14).
- If there is an electronic filing system in the requested State, the Convention allows for electronic application for recognition and enforcement of the judgment. If so, the judgment creditor does not need to go to the court in person.
- Since the outbreak of COVID-19, courts in many jurisdictions around the world have resorted to the use of video-link to continue handling cases. Remote hearings may be equally beneficial at the recognition and enforcement stage. The use of video-link is also discussed above in the context of the **taking of evidence**.



### HCCH 2019 Judgments Convention

### HCCH 2015 Principles on Choice of Law

#### **Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters**

While it has not yet entered into force, the Judgments Convention has equally been designed to operate in an electronic context. The recognition and enforcement mechanism established by the Convention is designed to promote the better management of transaction and litigation risks, and shorten timeframes for the recognition and enforcement of a judgement in other jurisdictions, providing better, more effective justice for individuals and businesses alike.

In a post-COVID-19 world, its widespread adoption and application will be of significant importance for those operating in cross-border situations, greatly facilitating the enforcement of their rights and ultimately ensuring legal certainty and predictability when planning transactions.

#### **Agreements on the Governing Law of International Commercial Contracts**

The Principles on Choice of Law can be seen both as an illustration of how a comprehensive choice of law regime for giving effect to party autonomy may be constructed and as a guide to “best practices” in establishing and refining such a regime. In times of severe uncertainty and economic crisis, the possibility to choose the governing law of their commercial contract may help economically strained parties reduce legal costs. The Principles allow them to give proper consideration to issues such as to the validity and effect of their choice, as well as the drafting of an enforceable choice of law agreement. Certainty concerning the parties’ choice of law is particularly important in times of crisis, for example in considering to what extent force majeure may be invoked.

The Principles provide a useful source of inspiration for arbitrators or judges in interpreting the parties’ choice and in determining the effects and the reach of such a choice. Their non-binding nature also affords lawmakers at a national, regional, supranational or international level the flexibility to implement the Principles in whole or in part and to take specific policy decisions where there is deference to the law of the forum. This process also allows States redirect resources to more urgent needs, without undermining the possibility of parties from their jurisdictions to enjoy access to justice through sound legal regimes.



## Looking Ahead

The COVID-19 pandemic has affected our lives in ways we never expected. It will almost certainly have a lasting impact on the way we go about our lives in the future, but we should take the opportunity to embrace the challenge.

At the HCCH, we will continue our work in fulfilment of our mandate, in particular with a view to finding ways to harness the power of technology as we continue to promote effective access to justice for all and encourage cross-border trade and commerce.

It is our hope that States will continue to study and implement not only the instruments referred to in this Toolkit, but all of the core HCCH Conventions, in order to ensure the effective operation of a robust legal framework facilitating cross-border mobility, transactions and dispute resolution for individuals, families and companies across the globe.

For more information, please consult the website of the HCCH: [www.hcch.net](http://www.hcch.net)



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