

CHAPTER FOUR

ACCESSION AND IMPLEMENTATION

Procedure for accession

Article 38 provides that the instrument of accession to the Convention shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, and that the Convention shall enter into force in the acceding State on the first day of the third calendar month after such deposit. But the accession affects relations only between the acceding State and such Contracting States as accept the accession. This acceptance is made by declaration in the same manner as the accession.

The Convention contains express provisions for Contracting States which comprise two or more territorial units in which different systems of law are applicable and States in which executive, judicial and legislative powers are distributed between central and other authorities of the State. In the former case, the Contracting State may, at the time of accession, declare that the Convention shall extend to one, some or all of the territorial units (Article 40); in the latter, Article 41 expressly states that accession “shall carry no implication as to the internal distribution of powers within that State” and Article 33 makes it clear that non-unitary States are not bound to apply to provisions of the Convention between their internal territorial units. These clauses are intended to permit States of a federal character to accede to the convention and implement it in the manner required by their particular constitutional circumstances.

Reservations

The only Reservations which are permitted (see Article 42) are those in respect of translations (a Contracting State may object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority: Article 24(2)) and of legal costs and expenses (under Article 26(3), discussed in Chapter Three above).

Notification to the Conference Bureau

Although the Ministry of Foreign Affairs of the Kingdom of the Netherlands carries out all the formal depository functions, the Permanent Bureau of the Hague Conference on Private International Law (the address of which is

6 Scheveningseweg
2517 KT The Hague
Netherlands)

has an important role as a continuing source of information about the operation of the Convention.

It is particularly important that the Permanent Bureau be notified of the identity of the Central Authority (with the name of the relevant officer(s), address, telephone, fax and other numbers) and that changes in these details are similarly notified. The Bureau is thus in a position to provide the information to the Central Authorities of other Contracting States. The Bureau also appreciates receiving copies of relevant legislative texts, significant judicial decisions under the Convention, and any statistical or other reports prepared by Central Authorities.

Legislative provision

Some legislation will be necessary in order to give effect to the Convention. It is, of course, a matter for local decision whether effect is given to the Convention by restating its provisions in legislative form (as in the Australian Family Law (Child Abduction Convention) Regulations; there is also a single section in the parent Family Law Act) or by scheduling the text of the Convention (or the English or French text alone) to a short Act. The latter practice has been followed in Canada and the United Kingdom.

Whatever practice is followed, the legislation will have to address certain matters (notably the designation of the Central Authority and of other Contracting States); the following listing of major points may be useful, reference being made to the three legislative texts:

- a. Designation of Central Authorities
- b. Designation of Contracting States
- c. Costs and legal expenses
- d. Which courts are to have jurisdiction
- e. Interim and provisional powers of courts
- f. Evidential provisions
- g. Power to make declaration under Article 15 of the Convention

The United Kingdom statute, relevant parts of which are set out in Appendix B, makes detailed provision as to reports, the prohibition on decisions on the merits while an application is pending, and the effect of an order under the Convention on previous court orders.