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Principles on Choice of Law in International Commercial Contracts

Note by the Secretariat

1. By letter of 10 April 2015, the Permanent Bureau of the Hague Conference on Private International Law ("Hague Conference") requested the Commission to consider endorsing the Principles on Choice of Law in International Commercial Contracts ("Hague Principles"). With its request, the Permanent Bureau submitted English and French versions of the Hague Principles. They are reproduced as an annex to this note in the form in which they were received.

2. By way of general background, it may be noted that the objective of the Hague Principles is to reinforce party autonomy and to ensure that the law chosen by the parties in international commercial transactions has the widest scope of application, subject to clearly defined limits. This objective may be seen as complementing existing UNCITRAL instruments which are also based on the principle of party autonomy in international transactions, such as the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)¹ and the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.² To ensure consistency with those and other texts, the Secretariat participated as an observer in the meetings of the Hague Conference Working Group on Choice of Law in International Commercial Contracts.

¹ United Nations, *Treaty Series*, vol. 1489, No. 25567, p. 3.

² United Nations publication, Sales No. E.08.V.4.



Annex

PRINCIPLES ON CHOICE OF LAW IN INTERNATIONAL COMMERCIAL CONTRACTS

Approved on 19 March 2015

Preamble

1. This instrument sets forth general principles concerning choice of law in international commercial contracts. They affirm the principle of party autonomy with limited exceptions.
2. They may be used as a model for national, regional, supranational or international instruments.
3. They may be used to interpret, supplement and develop rules of private international law.
4. They may be applied by courts and by arbitral tribunals.

Article 1 – Scope of the Principles

1. These Principles apply to choice of law in international contracts where each party is acting in the exercise of its trade or profession. They do not apply to consumer or employment contracts.
2. For the purposes of these Principles, a contract is international unless each party has its establishment in the same State and the relationship of the parties and all other relevant elements, regardless of the chosen law, are connected only with that State.
3. These Principles do not address the law governing:
 - (a) the capacity of natural persons;
 - (b) arbitration agreements and agreements on choice of court;
 - (c) companies or other collective bodies and trusts;
 - (d) insolvency;
 - (e) the proprietary effects of contracts;
 - (f) the issue of whether an agent is able to bind a principal to a third party.

Article 2 – Freedom of choice

1. A contract is governed by the law chosen by the parties.
2. The parties may choose:
 - (a) the law applicable to the whole contract or to only part of it; and
 - (b) different laws for different parts of the contract.

3. The choice may be made or modified at any time. A choice or modification made after the contract has been concluded shall not prejudice its formal validity or the rights of third parties.

4. No connection is required between the law chosen and the parties or their transaction.

Article 3 – Rules of law

The law chosen by the parties may be rules of law that are generally accepted on an international, supranational or regional level as a neutral and balanced set of rules, unless the law of the forum provides otherwise.

Article 4 – Express and tacit choice

A choice of law, or any modification of a choice of law, must be made expressly or appear clearly from the provisions of the contract or the circumstances. An agreement between the parties to confer jurisdiction on a court or an arbitral tribunal to determine disputes under the contract is not in itself equivalent to a choice of law.

Article 5 – Formal validity of the choice of law

A choice of law is not subject to any requirement as to form unless otherwise agreed by the parties.

Article 6 – Agreement on the choice of law and battle of forms

1. Subject to paragraph 2:
 - (a) whether the parties have agreed to a choice of law is determined by the law that was purportedly agreed to;
 - (b) if the parties have used standard terms designating two different laws and under both of these laws the same standard terms prevail, the law designated in the prevailing terms applies; if under these laws different standard terms prevail, or if under one or both of these laws no standard terms prevail, there is no choice of law.
2. The law of the State in which a party has its establishment determines whether that party has consented to the choice of law if, under the circumstances, it would not be reasonable to make that determination under the law specified in paragraph 1.

Article 7 – Severability

A choice of law cannot be contested solely on the ground that the contract to which it applies is not valid.

Article 8 – Exclusion of renvoi

A choice of law does not refer to rules of private international law of the law chosen by the parties unless the parties expressly provide otherwise.

Article 9 – Scope of the chosen law

1. The law chosen by the parties shall govern all aspects of the contract between the parties, including but not limited to:

- (a) interpretation;
- (b) rights and obligations arising from the contract;
- (c) performance and the consequences of non-performance, including the assessment of damages;
- (d) the various ways of extinguishing obligations, and prescription and limitation periods;
- (e) validity and the consequences of invalidity of the contract;
- (f) burden of proof and legal presumptions;
- (g) pre-contractual obligations.

2. Paragraph 1 (e) does not preclude the application of any other governing law supporting the formal validity of the contract.

Article 10 – Assignment

In the case of contractual assignment of a creditor's rights against a debtor arising from a contract between the debtor and creditor:

- (a) if the parties to the contract of assignment have chosen the law governing that contract, the law chosen governs mutual rights and obligations of the creditor and the assignee arising from their contract;
- (b) if the parties to the contract between the debtor and creditor have chosen the law governing that contract, the law chosen governs –
 - (i) whether the assignment can be invoked against the debtor;
 - (ii) the rights of the assignee against the debtor; and
 - (iii) whether the obligations of the debtor have been discharged.

Article 11 – Overriding mandatory rules and public policy (ordre public)

1. These Principles shall not prevent a court from applying overriding mandatory provisions of the law of the forum which apply irrespective of the law chosen by the parties.

2. The law of the forum determines when a court may or must apply or take into account overriding mandatory provisions of another law.

3. A court may exclude application of a provision of the law chosen by the parties only if and to the extent that the result of such application would be manifestly incompatible with fundamental notions of public policy (*ordre public*) of the forum.

4. The law of the forum determines when a court may or must apply or take into account the public policy (*ordre public*) of a State the law of which would be applicable in the absence of a choice of law.

5. These Principles shall not prevent an arbitral tribunal from applying or taking into account public policy (*ordre public*), or from applying or taking into account overriding mandatory provisions of a law other than the law chosen by the parties, if the arbitral tribunal is required or entitled to do so.

Article 12 – Establishment

If a party has more than one establishment, the relevant establishment for the purpose of these Principles is the one which has the closest relationship to the contract at the time of its conclusion.
