

QUESTIONNAIRE

janvier / January 2007



**QUESTIONNAIRE ADRESSÉ AUX ETATS MEMBRES
EN VUE D'EXAMINER L'OPPORTUNITÉ D'ÉLABORER UN
INSTRUMENT RELATIF AU CHOIX DE LA LOI APPLICABLE EN
MATIÈRE DE CONTRATS INTERNATIONAUX**

établi par le Bureau Permanent

* * *

**QUESTIONNAIRE ADDRESSED TO MEMBER STATES
TO EXAMINE THE PRACTICAL NEED FOR THE DEVELOPMENT OF AN
INSTRUMENT CONCERNING CHOICE OF LAW IN
INTERNATIONAL CONTRACTS**

drawn up by the Permanent Bureau

**Questionnaire addressed to Member States
to examine the practical need for the development
of an instrument concerning choice of law in international contracts**

As you know, in April 2006, the then Special Commission (now called Council) on General Affairs and Policy of the Hague Conference on Private International Law invited the Permanent Bureau to prepare a feasibility study on the development of an instrument (for example, a Convention, a Model Law, Principles or a Guide to Good Practice) concerning choice of law¹ in international contracts. It was decided that the study should consider in particular whether there is a practical need for the development of such an instrument.

The attached Questionnaire addressed to Member States of the Organisation has been prepared for that purpose. Part I of the Questionnaire is specifically for Member States to complete in their legislative capacity.

Conscious of the short delay to respond to this Questionnaire the Permanent Bureau is further sending: a) Part II of the Questionnaire to the International Chamber of Commerce which will consult all its members; and, b) Part III to a number of International Arbitration Centres / Organisations, a list of which is attached for your information. However, if time allows and Member States so wish, they could also use Part II to consult relevant companies, industries or business sectors in their jurisdiction. Similarly, Member States might use Part III to consult arbitration centres within their jurisdiction.

The Permanent Bureau would very much appreciate receiving your answers if possible **before 2 March 2007**. Answers should be sent by e-mail to < secretariat@hcch.net > with the following heading and indication in the subject field: "Questionnaire concerning choice of law in international contracts – [name of the Member State]". It is the intention to present to the Council at its meeting of 2-4 April 2007 the results of this consultation along with an analysis, under preparation, of the norms available at the international or regional levels that provide some solutions in this area of the law. Your cooperation in responding to this Questionnaire is very much appreciated.

Identification

Name of the Member State: _____

For follow-up purposes

Name of contact person: _____

Telephone number: _____

E-mail address: _____

¹ This Questionnaire only addresses the freedom to choose the *law applicable* to a contract. It does not address the freedom to choose *a court* which is already covered by the Hague Convention of 30 June 2005 on Choice of Court Agreements. One purpose of this Questionnaire is to explore whether that Convention should be supplemented by an instrument on choice of law.

Part I – Questions addressed to Member States in their legislative capacity

- 1) Does the law in your State provide in general for party autonomy, with possible public policy exceptions, as to the choice of law for international contracts?
- YES - please specify whether it is provided by usage (custom), domestic law or international law:
 NO - please briefly explain:
- 2) In your State, are consumers, employees and / or other parties excepted from party autonomy as to the choice of law for international contracts?
- YES - please list such types of parties:
 NO
- 3) In your State, are certain subject matters excepted from party autonomy as to the choice of law for international contracts?
- YES - please list such subject matters:
 NO
- 4) Approximately what is the proportion of international contracts entered into in your State that include a choice of law provision?
- All, or virtually all
 More than half
 About half
 Less than half
 None or virtually none
- 5) Are you of the view that a legally binding norm such as an international treaty or domestic law (which could be based on a Model Law) is or would be useful to assist, in relation to international contracts,
- a) parties with their choice of law;
- YES - please specify whether it should be limited to certain contracts:
 NO - please briefly explain:
- b) judicial authorities in resolving disputes regarding the applicable law; and,
- YES - please specify whether it should be limited to certain contracts:
 NO - please briefly explain:
- c) arbitral tribunals in resolving disputes regarding the applicable law?
- YES - please specify whether it should be limited to certain contracts:
 NO - please briefly explain:

- 6) Are you of the view that a non-binding instrument such as a set of Legal Principles or Guide to Good Practice is or would be useful to assist, in relation to international contracts,
- a) parties with their choice of law;
- YES - please specify whether it should be limited to certain contracts:
 NO - please briefly explain:
- b) judicial authorities in resolving disputes regarding the applicable law; and,
- YES - please specify whether it should be limited to certain contracts:
 NO - please briefly explain:
- c) arbitral tribunals in resolving disputes regarding the applicable law?
- YES - please specify whether it should be limited to certain contracts:
 NO - please briefly explain:
- 7) Other comments:

Part II – Questions addressed to members of the international business community

- 1) Can you please roughly estimate the number of international contracts your company, industry or business sector enters into every year?
- 2) Approximately what proportion of the international contracts of your company, industry or business sector are entered into with consumers?
- All, or virtually all
 More than half
 About half
 Less than half
 None or virtually none
- 3) Approximately what is the proportion of international contracts of your company, industry or business sector that include a choice of law provision?
- All, or virtually all
 More than half
 About half
 Less than half
 None or virtually none

- 4) In court proceedings concerning international contracts of your company, industry or business sector **that include a choice of law provision**, approximately what is the proportion of cases in which the choice was upheld/respected by the judge?
- All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 5) In court proceedings concerning international contracts of your company, industry or business sector **that do not include a choice of law provision**, approximately what is the proportion of cases in which the issue of applicable law was the subject of litigation?
- All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 6) In international arbitration concerning international contracts of your company, industry or business sector **that include a choice of law provision**, approximately what is the proportion of cases in which the choice was upheld/respected by the arbitral tribunal?
- All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 7) In international arbitration concerning international contracts of your company, industry or business sector **that do not include a choice of law provision**, approximately what is the proportion of cases in which the issue of applicable law was the subject of dispute?
- All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 8) Under the law in force in your State are you allowed to choose the law that would govern your international contracts?
- YES - please specify whether this freedom is provided by usage (custom), domestic law or international law:
 - NO - please briefly explain:

9) If the law in your State does not allow you to choose the law that would govern your international contract, is your company, industry or business sector of the view that a norm that would allow party autonomy (with appropriate safeguards) as to the choice of law in international contracts is needed or appropriate?

YES

NO - please briefly explain:

10) Is your company, industry or business sector of the view that a legally binding norm such as an international treaty or domestic law is or would be useful to assist, in relation to international contracts,

a) parties with their choice of law;

YES

NO - please briefly explain:

b) judicial authorities in resolving disputes regarding the applicable law; and,

YES

NO - please briefly explain:

c) arbitral tribunals in resolving disputes regarding the applicable law?

YES

NO - please briefly explain:

11) Is your company, industry or business sector of the view that a non-binding instrument such as a set of Legal Principles or Guide to Good Practice is or would be useful to assist, in relation to international contracts,

a) parties with their choice of law;

YES

NO - please briefly explain:

b) judicial authorities in resolving disputes regarding the applicable law; and,

YES

NO - please briefly explain:

c) arbitral tribunals in resolving disputes regarding the applicable law?

YES

NO - please briefly explain:

12) Other comments:

Part III - stakeholders in the field of international commercial arbitration**Questions for arbitrators and / or arbitration centres and institutions**

- 1) Can you please roughly indicate the number of disputes with regard to international contracts you are seized of every year?
- 2) Approximately what is the proportion of international contracts you are seized of for which the issue of applicable law was the subject of dispute?
 - All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 3) Approximately what is the proportion of international contracts you are seized of that include a choice of law provision?
 - All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 4) Approximately what is the proportion of international contracts you are seized of for which the issue of the validity of the choice of law provision regarding the applicable law was the subject of dispute?
 - All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 5) In arbitration concerning international contracts that include a choice of law provision, approximately what is the proportion of cases you are seized of in which the choice of law provision is upheld/respected by the arbitral tribunal?
 - All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 6) Are you of the view that a legally binding norm such as an international treaty or domestic law (which could be based on a Model Law) is or would be useful to assist, in relation to international contracts,

- a) parties with their choice of law; and,
- YES
 NO - please briefly explain:
- b) arbitral tribunals in resolving disputes regarding the applicable law?
- YES
 NO - please briefly explain:
- 7) Are you of the view that a non-binding instrument such as a set of Legal Principles or Guide to Good Practice is or would be useful to assist, in relation to international contracts,
- a) parties with their choice of law; and,
- YES
 NO - please briefly explain:
- b) arbitral tribunals in resolving disputes regarding the applicable law?
- YES
 NO - please briefly explain:
- 8) Other comments:

Questions for parties to commercial arbitration

- 9) Approximately what is the proportion of your international contracts that include a choice of law provision?
- All, or virtually all
 More than half
 About half
 Less than half
 None or virtually none
- 10) Approximately what is the proportion of your international contracts that actually end-up before arbitral tribunals?
- All, or virtually all
 More than half
 About half
 Less than half
 None or virtually none

- 11) In international arbitration concerning international contracts of your company, industry or business sector **that include a choice of law provision**, approximately what is the proportion of cases in which the choice was upheld/respected by the arbitral tribunal?
- All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 12) In international arbitration concerning international contracts of your company, industry or business sector **that do not include a choice of law provision**, approximately what is the proportion of cases in which the issue of applicable law was the subject of dispute?
- All, or virtually all
 - More than half
 - About half
 - Less than half
 - None or virtually none
- 13) Are you of the view that a legally binding norm such as an international treaty or domestic law (which could be based on a Model Law) is or would be useful to assist, in relation to international contracts,
- a) parties with their choice of law; and,
- YES
 - NO - please briefly explain:
- b) arbitral tribunals in resolving disputes regarding the applicable law?
- YES
 - NO - please briefly explain:
- 14) Are you of the view that a non-binding instrument such as a set of Legal Principles or Guide to Good Practice is or would be useful to assist, in relation to international contracts,
- a) parties with their choice of law; and,
- YES
 - NO - please briefly explain:
- b) arbitral tribunals in resolving disputes regarding the applicable law?
- YES
 - NO - please briefly explain:
- 15) Other comments:

List of Consulted International Arbitration Centres / Organisations

National Institutions

- Abu Dhabi Commercial Conciliation and Arbitration Center at the Abu Dhabi Chamber of Commerce and Industry (United Arab Emirates)
- Addis Ababa Chamber of Commerce & Sectorial Association [AACCSA] Arbitration Institute (Ethiopia)
- Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce (Norway)
- Arbitration Court at the Bulgarian Chamber of Commerce and Industry (Bulgaria)
- Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (Czech Republic)
- Arbitration Court of the Estonian Chamber of Commerce and Industry (Estonia)
- Arbitration Court of the Slovak Chamber of Commerce and Industry (Slovakia)
- Arbitration Foundation of Southern Africa (South Africa)
- Arbitration Institute of the Stockholm Chamber of Commerce (Sweden)
- Arbitration of Latvian Chamber of Commerce and Industry (Latvia)
- Arbitration Service of the Cyprus Chamber of Commerce and Industry (Cyprus)
- Australian Centre for International Commercial Arbitration (Australia)
- Bahrain Chamber of Commerce and Industry (Bahrain)
- Bangladesh Council for Arbitration of the Federation of Bangladesh Chambers of Commerce and Industry (Bangladesh)
- Beijing Arbitration Commission (China)
- Board of Arbitration of the Central Chamber of Commerce of Finland (Finland)
- British Columbia International Commercial Arbitration Centre (Canada)
- Canadian Commercial Arbitration Centre (Canada)
- Centre belge d'arbitrage et de médiation – CEPANI (Belgium)
- Centre d'arbitrage de médiation et de conciliation de la Chambre de commerce et d'industrie du Bénin (Benin)
- Centre d'arbitrage du Congo (Congo)
- Centre d'arbitrage du Groupement interpatronal du Cameroun (Cameroun)
- Centre d'Arbitrage et de Médiation de Dakar (Senegal)
- Centre d'Arbitrage, de Médiation et de Conciliation de Ouagadougou de la Chambre de Commerce, d'Industrie et d'Artisanat (Burkina Faso)
- Centre d'arbitrage et de médiation de Madagascar (Madagascar)
- Centre de conciliation et d'arbitrage d'Agadir (Morocco)
- Centre de conciliation et d'arbitrage du Mali (Mali)
- Centre de conciliation et d'arbitrage de Tunis (Tunisia)
- Centre de médiation et d'arbitrage de la Chambre algérienne de commerce et d'industrie (Algeria)
- Centre de Médiation et d'Arbitrage de Paris (France)
- Centre Libyen de Médiation et d'Arbitrage (Libya)
- Centro de Arbitraje de la Cámara de Comercio de Caracas (Venezuela)
- Centro de Arbitraje de México (Mexico)
- Centro de Arbitraje y Conciliación de la Cámara de Comercio de Guayaquil (Ecuador)
- Centro de Arbitraje y Mediación de la Cámara Nacional de Comercio y Servicios de Paraguay (Paraguay)
- Centro de Conciliación y Arbitraje de la Cámara de Comercio e Industria de Tegucigalpa (Honduras)
- Centro de Conciliación y Arbitraje de la Cámara de Comercio, Industrias y Agricultura de Panamá (Panama)
- Centro de Conciliación y Arbitraje Nacional e Internacional de la Cámara de Comercio de Lima (Peru)
- Chamber of Commerce and Industry of Geneva (Switzerland)
- Chamber of National and International Arbitration at the Milan Chamber of Commerce (Italy)
- Chambre arbitrale de Paris (France)

List of Consulted International Arbitration Centres / Organisations

- Chambre de Commerce du Grand-Duché de Luxembourg (Luxembourg)
- Chartered Institute of Arbitrators (United Kingdom - England)
- Chartered Institute of Arbitrators (United Kingdom - Scotland)
- Chicago International Dispute Resolution Association (United States)
- China International Economic and Trade Arbitration Commission (China)
- Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala (Guatemala)
- Commercial Arbitration and Conciliation Centre at the Bogota Chamber of Commerce (Colombia)
- Commercial Arbitration Centre in Harare (Zimbabwe)
- Commercial Arbitration Court- Iceland Chamber of Commerce (Iceland)
- Conciliation, Mediation and Arbitration Commission (Swaziland)
- Council For National and International Commercial Arbitration (India)
- Cour d'Arbitrage de Côte d'Ivoire (Côte d'Ivoire)
- Court of Arbitration at the Polish Chamber of Commerce (Poland)
- Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry (Hungary)
- Court of International Commercial Arbitration Attached to the Chamber of Commerce and Industry of Romania and Bucharest (Romania)
- Danish Institute of Arbitration (Denmark)
- Directorate of dispute Prevention and Resolution (Lesotho)
- Dubai International Arbitration Centre (United Arab Emirates)
- Dublin International Arbitration Centre (Ireland)
- Foreign Trade Arbitration at the Chamber of Commerce and Industry of Serbia (Serbia)
- German Arbitration Institute (Germany)
- Hong Kong International Arbitration Center (China)
- Indian Council of Arbitration (India)
- International Arbitration Centre of the Austrian Federal Economic Chamber (Austria)
- International Arbitration Court of the Belarusian Chamber of Commerce and Industry (Belarus)
- International Arbitration Court of the Juridical Centre "IUS" (Kazakhstan)
- International arbitration- Venice Chamber of National and International Arbitration (Italy)
- International Center of Dispute Resolution of the American Arbitration Association (United States)
- International Centre for Alternative Dispute Resolution (India)
- International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (Russian Federation)
- International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (Ukraine)
- International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Republic of Moldova (Moldova)
- International Court of Arbitration in Affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic (Kyrgyzstan)
- Israeli Institute of Commercial Arbitration at the Federation of Israeli Chambers of Commerce (Israel)
- Italian Association for Arbitration (Italy)
- Japan Commercial Arbitration Association (Japan)
- Lebanese Arbitration Centre of the Chamber of Commerce & Industry & Agriculture of Beirut and Mount Lebanon (Lebanon)
- Malta Arbitration Centre (Malta)
- Mongolian National Arbitration Court (Mongolia)
- Netherlands Arbitration Institute (The Netherlands)
- Permanent Arbitration Court at the Croatian Chamber of Commerce (Croatia)
- Permanent Court of Arbitration at the Mauritius Chamber of Commerce and Industry (Mauritius)

List of Consulted International Arbitration Centres / Organisations

- Permanent Court of Arbitration of the Chamber of Commerce and Industry of Slovenia (Slovenia)
- Philippine Dispute Resolution Center Inc. of the Philippine Chamber of Commerce and Industry (Philippines)
- Portuguese Chamber of Commerce and Industry Arbitration Center (Portugal)
- Riga International Arbitration Court (Latvia)
- Santiago Arbitration and Mediation Center (Chile)
- Singapore International Arbitration Center (Singapore)
- Spanish Court of Arbitration (Spain)
- St Petersburg International Commercial Arbitration Court (Russian Federation)
- Swiss Chambers' Arbitration (Switzerland)
- Thai Arbitration Institute (Thailand)
- Vietnam International Arbitration Centre at the Chamber of Commerce and Industry of Vietnam (Vietnam)
- Yemen Center for Conciliation and Arbitration (Yemen)
- Zurich Chamber of Commerce (Switzerland)

Regional Institutions

- Cairo Regional Center for International Commercial Arbitration (Africa)
- Commercial Arbitration Centre for the States of the Co-operation Council for the Arab States of the Gulf
- Corte de Arbitraje Internacional para el MERCOSUR (South America)
- Cour commune de justice et d'arbitrage de l'Organisation pour l'harmonisation en Afrique du droit des affaires (Africa)
- European Court of Arbitration (Europe)
- Kuala Lumpur Regional Centre for Arbitration (Asia)
- Lagos Regional Centre for International Commercial Arbitration (Africa)
- Tehran Regional Arbitration Centre (Middle East)

International Institutions

- International Centre for Settlement of Investments Disputes
- International Court of Arbitration of the International Chamber of Commerce
- London Court of International Arbitration
- Permanent Court of Arbitration
- WIPO Arbitration and Mediation Center

Other Organisations

- Institut de droit international
- Institute for Transnational Arbitration
- Organisation of American States
- UNCITRAL
- UNIDROIT