

Asuncion, May 7, 2013.

Senator
Sir Alfredo Luis Jaeggli, President
Honorable Paraguayan Senate Chamber

I am honored to address you and the Senators of the Nation, to propose a law **“ON APPLICABLE LAW TO INTERNATIONAL CONTRACTS”**.

In conformity with what established in Article 203 of the Constitution, this law proposal is presented in order to positively innovate the current juridical regime of international contracts in Paraguayan law.

It is important to recognize that the proposal was originally elaborated by a renowned jurist and professor of our country, Doctor Jose Antonio Moreno Rodriguez, based on The Hague Principles. It must be emphasized that as a precedent, the mentioned jurist had been designated by The Hague within the 15 experts of the Working Group, among two South Americans (http://www.hcch.net/upload/wop/contracts_members.pdf) and further officially named representative towards the Special Committee by the Ministry of Foreign Affairs; which approved the final text of The Hague Principles reproduced almost entirely by the law proposal. In such committee, Dr. Moreno Rodriguez integrated the writing sub-committee of the final text, presiding special working sub-committees, receiving valuable commentaries of American and European jurists agglutinated in the CENTRO DE ESTUDIOS DEL DERECHO, LA ECONOMÍA Y LA POLÍTICA (CEDEP) (www.cedep.org.py) and the Asociación Americana de Derecho Internacional Privado (ASADIP) (www.asadip.org).

Considering the importance of the proposal, I have formed a special committee of legal advisers within my legislative chamber, counting with national and international postgraduates. This has given me a critic vision of Dr. Moreno Rodriguez’s initial proposal. Subsequently, applying my Master Studies in Law (LL.M) in International Legal Studies in the United States -in which I specialized in International Law of Business and International Organizations- and my knowledge in our law as a practicing attorney in Civil and Commercial Law (which I fully exercised prior to being a Senator), I have given final adjustments to the present proposal, product of a marvelous working team conformed by excellent lawyers, whom I am proud to have worked with. Consequently, I hereby submit it to your presiding chamber’s consideration.

With this law proposal, we intend to provide Paraguay with a body of law which contains the “Principles” on applicable law to cross-border contracting, principles which were recently proposed by The Hague Conference of Private International Law, maximum codifying organ in the field.

It shall be taken into account that our country counts with an anachronistic regime in matters of applicable law to contracting for cross-border commerce, situation that must be reverted, which is fundamental for a Mediterranean country like Paraguay. A large proportion of the current

norms contained in the Civil Code, are inspired in ancient treaties or nineteenth century codes, which contradict the commercial necessities of today's world.

The Principles afore mentioned, among other uses, shall serve as an inspiration to national legislators for the elaboration of laws which unify the regulation on the matter, which is highly desirable to achieve major predictability in international commercial relationships.

It is known that Paraguay has had active participation in the elaboration of such instrument, as in official representation of the country before the special committee created in The Hague for such matter, and through participation of a conational in the Group of Experts whom for many years elaborated the "Principles" project.

The present law proposal basically reproduces the approved text at the mentioned The Hague Conference, which results highly recommendable, along with some convenient modifications, in order to synchronize it with the Mexico Convention of 1994 on applicable law to international contracts, approved by Inter-American Specialized Conferences on Private International Law (CIDIPs) of the Organization of American States, whose text served as an inspiration in the elaboration of the abovementioned "Hague Principles". As a matter of fact, the Mexico Convention can be incorporated via ratification or via the adoption of a law which captures the regulation's spirit- as it has already occurred in Latin America.

This law proposal incorporated the virtues of the Mexico Convention, also capturing the advancements of the approved instrument in The Hague.

Currently possessing one of the most antique regimes of the world on cross-border contracting matters, accordant to what was previously pointed, Paraguayan law will –with this new body of law- become forward-looking. This law can even inspire others which may be dictated in the world, given that it sets a path on how to embody The Hague principles in a legislative text.

It is important to say that this law proposal, if approved, will have a great impact in the world, and Paraguay will be counting with the most modern law in the matter!

For the above-mentioned considerations Mr. Senate President, we trust that you will perform the due diligences to approve this law proposal.

With no other motive, best regards.

HUGO ESTEBAN ESTIGARRIBIA GUTIÉRREZ
Senator of the Nation

PARAGUAYAN LAW 5393 of 2015

“REGARDING THE APPLICABLE LAW TO INTERNATIONAL CONTRACTS”

Article 1- Scope of application

This law regulates the choice of applicable law in international contracts when one of the parties acts in exercise of their business or profession. Its provisions are not applied to consumer, employer, franchising, agency and distribution contracts.

Article 2- Internationality of the contract

The applicability of this law to international contracts shall be interpreted in the broadest way possible, and will solely be excluded those agreements in which all of the relevant elements are linked with only one State.

Article 3- Issues not addressed in this law

This law does not address the law governing the:

- a) Capacity of natural persons;
- b) Arbitration agreements and agreements on choice of court;
- c) Companies or other collective bodies and trusts;
- d) Insolvency procedures;
- e) Issue of whether an agent is able to bind a principal to a third party.

Article 4- 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, in the measure that these are clearly distinguished.
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 5- Rules of law

In this law, a reference to law includes rules of law that are generally accepted on a non-state origin, as a neutral and balanced set of rules.

Article 6 – 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 7- 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 8- Agreement on the choice of law

1. To determine whether the parties have agreed to a choice of law is determined by the law that was purportedly agreed to.
2. If the parties have used standard terms designating different laws and under both of these laws the same standard terms prevail, the law designated in those terms applies; if under these laws different standard terms prevail, or if no standard terms prevail, there is no choice of law.
3. 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 this article.

Article 9- Separability of the choice of law clause

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

Article 10- Exclusion of renvoi

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

Article 11- Absence or inefficiency of the choice

1. If the parties have not selected the applicable law, or if their selection proves ineffective, the contract shall be governed by the law of the State with which it has the closest ties.
2. The tribunal will take into account all objective and subjective elements of the contract to determine the law of the State with which it has the closest ties.

Article 12- Equitative harmonization of interests

In addition to the provisions in the foregoing articles, the guidelines, customs, and principles of international commercial law as well as commercial usage and practices

generally accepted shall apply in order to discharge the requirements of justice and equity in the particular case.

Article 13- Scope of application of the law

1. The law applicable in virtue of this law shall govern all aspects of the contract between the parties, particularly:

- a) its interpretation;
- b) the rights and obligations of the parties;
- c) the performance of the obligations established by the contract and the consequences of nonperformance of the contract, including assessment of injury;
- d) the various ways in which the obligations can be performed, and prescription and lapsing of actions;
- e) the consequences of nullity or invalidity of the contract;
- f) the charge of the proof of legal presumptions; and
- g) the precontractual obligations.

2. Paragraph 1 section (e) does not exclude the application of any other law that confirms the formal validity of the contract.

Article 14- Contractual assignment

In the case of contractual assignment of a creditor's rights against a debtor arising from a contract between the debtor and creditor they shall proceed in the following way:

- a) if the parties to the contract of assignment have chosen the law governing that contract, the law chosen governs the 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 determines (1) whether the assignment can be invoked against the debtor, (2) the rights of the assignee against the debtor, and (3) whether the obligations of the debtor have been discharged.

Article 15- Registration and publicity

If the registration or publicity of determined contracts is mandatory in a state, such acts will be ruled by the law of that State.

Article 16- States with more than one internal judicial system

In the case of a State which has two or more systems of the law applicable in different territorial units, the determination of which system results applicable shall be done

according to the chosen law. If it is not possible to accomplish this, art. 11 of the present law shall be applied.

Article 17- Public policy and lois de police

1. The parties' choice of law does not forbid the judge to apply the mandatory norms of Paraguayan law which, according to this law, shall prevail even in presence of the choice of foreign law.
2. The judge may take into consideration the mandatory norms of other States closely linked with the case taking into account the consequences of its application or not.
3. The judge may exclude the application of a provision of the law chosen by the parties if and to the extent that the result of such application would be manifestly incompatible with fundamental notions of public policy.

Article 18- Derogations

For the purposes of this law, Articles 14, 17, 297, 687 and 699 of the Civil Code are derogated as long as they refer to international contracts. Every other provision of special laws contrary to this law in relation to the applicable law in international contracts is also derogated.