

QUESTIONNAIRE

janvier / January 2007



**QUESTIONNAIRE ADRESSÉ AUX PARTIES PRENANTES DANS LE
DOMAINE DE L'ARBITRAGE COMMERCIAL
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

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**QUESTIONNAIRE ADDRESSED TO STAKEHOLDERS IN THE
FIELD OF INTERNATIONAL COMMERCIAL ARBITRATION
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 stakeholders in the field of international commercial arbitration to examine the practical need for the development of an instrument concerning choice of law in international contracts

In April 2006, the then Special Commission (now called Council) on General Affairs and Policy of the Hague Conference on Private International Law, the body who has the responsibility to decide the work programme of the Organisation, invited the Permanent Bureau (the Secretariat of the Organisation) 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 law 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.

This Questionnaire is addressed to stakeholders in the field of international commercial arbitration. In this respect, if possible, we would very much appreciate if you could give us the views of your institution and / or consult arbitrators with whom your organisation has relations and parties to international commercial arbitrations that make use of your arbitration facilities. The Hague Conference will send related Questionnaires to Member States of the Organisation and members of the international business community (International Chamber of Commerce).

We would very much appreciate receiving your answers if possible **before 2 March 2007**. Answers should be sent by e-mail at <secretariat@hcch.net> with the following heading and indication in the subject field: "Questionnaire concerning choice of law in international contracts – [names of Arbitration Centre and State located]". It is our intention to present 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 of the respondent

Name of Arbitration Centre: _____

Name of State: _____

For follow-up purposes

Name of contact person: _____

Telephone number: _____

E-mail address: _____

Part A - 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:

Part B - 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: