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HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
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ONGOING WORK ON JUDGMENTS
– CHOICE OF COURT CONVENTION AND THE JUDGMENTS PROJECT –

drawn up by the Permanent Bureau

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TRAVAIL EN COURS EN MATIÈRE DE JUGEMENTS
– CONVENTION ÉLECTION DE FOR ET PROJET SUR LES JUGEMENTS –

établi par le Bureau Permanent

Preliminary Document No 7 A of January 2015 for the attention of the Council of March 2015 on General Affairs and Policy of the Conference

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1. Introduction

1. This document succinctly presents the most important developments in the area of jurisdiction and recognition and enforcement of judgments (hereafter "Judgments") since the last meeting of the Council on General Affairs and Policy (the Council) until January 2015,[1] including:

- the impending entry into force of the *Hague Convention of 30 June 2005 on Choice of Court Agreements* (Choice of Court Convention), following the decision on the approval of the Convention by the European Union (EU);
- the third Working Group meeting on the Judgments Project, which was held in Hong Kong SAR from 7 to 10 October 2014; and
- the ongoing promotional and implementation activities for the Hague Conference's work in the area of Judgments.

2. The forthcoming entry into force of the Choice of Court Convention

2. The Convention, which was concluded on 30 June 2005, is set to enter into force in 2015 (coinciding with the tenth anniversary of its conclusion) following the deposit of the instrument of approval by the EU.[2] Specifically, the Convention will enter into force on the first day of the month following a period of three months after the deposit of the instrument of approval by the EU (being the second entity to become a Party to the Convention). All EU Member States (with the exception of Denmark) as well as Mexico, which acceded to the Convention on 26 September 2007, will then be bound by the Convention. In practice, the Convention will only apply to exclusive choice of court agreements concluded after the Convention came into force for the State of the chosen court.[3]

3. The Choice of Court Convention also continues to receive growing support in the Asia Pacific region. In March 2014, during a speech in Parliament, the Minister for Law of Singapore announced that the Ministry is studying the feasibility of joining the Convention, in light of the then forthcoming establishment of the Singapore International Commercial Court.[4] The Choice of Court Convention also raises interest in other Asia Pacific dispute resolution hubs. The Hong Kong Secretary for Justice, Mr Rimsky SC, recently noted, in response to enquiries about the Hong Kong Department of Justice's consideration of the Convention, that it will "take appropriate measures as and when necessary, so as to ensure that [Hong Kong] stays at the forefront of international development and enhance [its] status as a leading hub for international legal and dispute resolution services in the Asia Pacific region".[5]

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[1] This document was finalised early January 2015.

[2] On 4 December 2014, the Council of the European Union (EU) adopted the decision on the approval, on behalf of the European Union, of the *Hague Convention of 30 June 2005 on Choice of Court Agreements,* see Council Decision of the European Union, 4 December 2014, OJ L353, p. 5 available at < http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0887&from=EN >.

[3] See Art. 16 and the Dogauchi-Hartley Explanatory Report, paras. 218 *et seq* for some illustrative examples.

[4] Speech by Minister for Law, K. Shanmugam, during the Committee of Supply Debate 2014, 5 March 2014, available at < https://www.mlaw.gov.sg/news/parliamentary-speeches-and-responses/speech-by-minister-during-cos-2014.html >. Chief Justice Menon of the Supreme Court of Singapore officially launched the Singapore International Commercial Court at the Opening of the Legal Year on 5 January 2015. For more information see, A. Henderson, G. Satryani and E. Chua, "The New frontier: Singapore launches the Singapore International Commercial Court offering a new forum for dispute resolution in Singapore", Lexology, 6 January 2015, available at < http://www.lexology.com/library/detail.aspx?g=af180555-1f01-45bc-a6e8-680e8052304f >.

[5] See written reply by the Secretary for Justice, Mr Rimsky SC, to a question by the Hon Dennis Kwok in the Legislative Council on 25 June 2004 regarding the Choice of Court Convention, available at < http://www.doj.gov.hk/eng/public/pr/20140625_pr.html >.

4. In Korea, a case of the Seoul High Court of Appeal referred to the provisions of the Choice of Court Convention, despite the fact that the Convention is not yet in force. This case[6] involved a contract for the transfer of several patent rights in which the parties had designated the Seoul District Court to resolve any disputes that might arise between them. Upon hearing an application by the defendants that the District Court had no jurisdiction to hear the case, the court held that the case fell under the exclusive jurisdiction of the courts of the country of registration of those patent rights.[7] This decision was appealed to the Seoul High Court of Appeal, which determined that as the dispute did not concern the validity or registration of patent rights, it did not fall under the exclusive jurisdiction of the courts of the place of registration of those patents and thus the choice of court clause in favour of the Seoul District Court should be upheld. In coming to this decision, the Court made explicit reference to Article 2 of the Choice of Court Convention, which excludes the validity of patents from the scope of the Convention, but leaves contractual matters within the remit of the Convention. The defendants then appealed to the Supreme Court of South Korea, which confirmed the decision of the Seoul High Court of Appeal.[8] This case illustrates the relevance of the Convention as an influential international instrument even before its entry into force.

5. The Permanent Bureau also continues to support progress on the Choice of Court Convention through its Implementation Dialogue, where interested States exchange news and information on implementation matters. Recently, Singapore joined the States already participating in the Dialogue.[9] Moreover, in anticipation of the entry into force of the Convention, the Permanent Bureau has updated the Choice of Court Section on the Hague Conference website with recent articles concerning the Convention and with fillable Word and PDF versions of the recommended form.[10] The Permanent Bureau anticipates that 2015 will be a year in which the entry into force of the Convention will feature high on the agenda of many promotional and educational activities in the soon to be Contracting States.

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[6] Seoul High Court of Appeal Decision No 2007NA96470, 21 January 2009 (in Korean), available at < http://glaw.scourt.go.kr >.

[7] Seoul District Court Decision No 2006GAHAP89560, 24 August 2007, available at < http://glaw.scourt.go.kr > (in Korean).

[8] The Supreme Court of Korea Decision No 2009DA19093. Following this, an application for recognition of the decision of the Seoul High Court of Appeal was brought in two Japanese courts. Both Nagoya District Court (名古屋地方裁判所豊橋支部平成 23 年 (ワ) 第 561 号, decided on 29 November 2012) and Mito District Court (水户地方裁判所下妻支部平成 23 年 (ワ) 第 206 号, decided on 5 November 2012) refused to recognise the Korean judgment with the reason that Japanese courts should have exclusive jurisdiction as the case concerned the patent rights registered in Japan. The applicant has appealed both decisions to the Nagoya High Court and Tokyo High Court respectively, no court decision has been published yet. (Note: both District Court judgments are not published, but referred in a Declaratory judgment given by the Tokyo District Court concerning the same parties, in which the Court dismissed the declaratory claims raised by the claimants who are the defendants in the Korean Judgment, with the reason that there is no interest for litigation given the on-going appeals in other Japanese courts, (東京地裁平 22 (ワ) 第 28813 号 , decided on 19 February 2013)). In addition, an application for, *inter alia*, the recognition of the Korean judgment was brought before the US District Court for the District of Columbia. The US District Court for the District of Columbia recognised the Korean judgment under the doctrine of comity. See Memorandum Opinion by US District Court for the District of Columbia, Civil Action No: 11-1637(RC), decided on 28 January 2013.

[9] Representatives from Argentina, Australia, Canada, Costa Rica, Germany, Mexico, New Zealand, Serbia, the European Union, Ukraine and the United States of America participate in the Implementation Dialogue. For further information on implementation tools serviced by the Permanent Bureau, see the Hague Conference website at < www.hcch.net > under "Choice of Court Section".

[10] Links to the form: Word and PDF versions. The recommended form, which appears as an annex to the Convention, is used to confirm the issuance and content of a judgment given by the court of origin (pursuant to a choice of court agreement) for the purposes of recognition and enforcement under the Convention.

3. Progress on the Judgments Project

6. In line with the direction given by Council in April 2014, [11] work during the past months has intensified at the Working Group level.

7. The Working Group met for the third time in October 2014 at the Department of Justice of the Hong Kong SAR. The meeting formed part of a successful HCCH Asia Pacific Week co-ordinated by the Asia Pacific Regional Office.[12] The Working Group and the Permanent Bureau are very grateful to the Hong Kong Department of Justice for hosting the meeting and for the excellent facilities, which contributed to a successful meeting.

8. At the October meeting, significant progress was made in furthering discussions, and drafting provisions, on the criteria for the recognition and enforcement of judgments. The Working Group developed two Working Documents which provide draft structures for a future Convention based on different approaches. The report of the third Working Group meeting appears as an annex to this document.

9. Preparations are well underway for the next Working Group meeting, which will be held in The Hague from 3 to 6 February 2015. The report of this forthcoming meeting will be circulated to Council in advance of its March 2015 meeting.

4. Raising awareness about the Conference's work in the area of Judgments

10. Successful projects carried out in 2014 include the Conference on Cross-border Recognition and Enforcement of Judgments which the Permanent Bureau organised in June 2014 in collaboration with the Ministry of Justice of the Russian Federation. The Conference was held as an opening event to the IVth St. Petersburg International Legal Forum and was attended by over 40 participants from the Russian Federation and five other jurisdictions.[13]

11. The Permanent Bureau also presented the Choice of Court Convention and the Judgments Project at a number of other events in 2014.[14] In particular, the Choice of Court Convention was presented at the Asia Pacific Economic Co-operation (APEC) workshop jointly organised by the Department of Justice of the Hong Kong SAR, in collaboration with the HCCH Asia Pacific Regional Office, entitled "The Ease of Doing Business through Hague Conventions" in August 2014, in Beijing, People's Republic of China. At the conclusion of the workshop the participants

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[11] See para. 6 of the Conclusions and Recommendations of the Council on General Affairs and Policy 2014 meeting, available on the Hague Conference website < www.hcch.net > under "Work in Progress" then "General Affairs".

[12] For more information on the HCCH Asia Pacific Week see the Hague Conference website at < www.hcch.net > under "News and Events". As part of the Asia Pacific week the Asia Pacific Regional Office also organised a Choice of Court Convention moot competition with the support of the Department of Justice of the Hong Kong SAR, the Chinese University of Hong Kong and some private sponsors. Students from eight Asia Pacific universities participated in the Moot Competition and the final rounds for the competition formed part of the HCCH Asia Pacific week. The team from Singapore Management University won the competition.

[13] Additional information about the Conference, including a link to the Conference agenda, Conclusions and Recommendations, presentations given during the Conference and responses to the Questionnaire are available on the Hague Conference website at < www.hcch.net > under "News and Events" on both the "Judgments Project" and the "Choice of Court" section webpages.

[14] Some specific events include: a presentation on "The 2005 Choice of Court Convention – the gate to effective court adjudication in cross-border cases" given at a conference held in Paris, France, on 23 May 2014, under the auspices of the ICC Institute of World Business Law; a presentation on the Choice of Court Convention, among other conventions, at the "International Series 2014: Systems, Challenges, Solutions: Trade, Intellectual Property, Courts and Governance" held in Geneva, Switzerland, 20-21 October 2014; a presentation on the Choice of Court Convention at an international conference on "Cross Border Co-operation in Civil and Commercial Matters through Hague Conventions" organised in Rabat, Morocco, on 10 and 11 November 2014; and a presentation on the interplay of the Brussels I*bis* Regulation with the Choice of Court Convention at a conference on Recent Developments in European Private & Business Law from 20 to 21 November 2014 in Trier, Germany. For further information, see the Hague Conference website at < www.hcch.net > under the "Choice of Court Section" then "News and Events".

noted "that some APEC member economies are actively considering the Choice of Court Convention and encourage the competent authorities of all other member economies to do the same". The participants also "acknowledged the benefits of harmonisation of the rules on recognition and enforcement of judgments and jurisdictional rules for parties engaged in cross-border trade and investment, and welcome the continuation of the Hague Judgments Project".[15]

12. The Permanent Bureau continues to maximise both human and financial resources allocated to the Judgments Project in order to ensure steady progress on this important legislative project. In this regard, the Permanent Bureau acknowledges with gratitude the significant contribution made by the Australian Government to the Judgments Project, which has resulted in the allocation of one FTE specifically to the Judgments Project from January 2013 until June 2015. The Permanent Bureau hopes that interested States will contribute to guaranteeing this supplementary funding for the period beyond June 2015.

13. The legal team dealing with the Judgments Project also has responsibility for the finalisation and future post-"Convention" work on the draft Hague Principles on Choice of Law in International Commercial Contracts, as well as post-Convention work relating to the Choice of Court Convention and the broader area of international commercial law (contracts, torts, trusts, etc). It also provides private international law support in response to invitations from other organisations, such as UNCITRAL and UNIDROIT, to participate in or comment on their ongoing projects in the area of international commercial law. Provided the allocated resources remain stable, the Permanent Bureau hopes to stay in a position to adequately respond to both the demands of normative work and the increasing requests for research, attendance at seminars and other presentations with regard to this area of the Hague Conference's work.

[15] Additional information concerning the APEC workshop, including a link to the Conclusions and Recommendations, is available on the Hague Conference website at < www.hcch.net > under the "Choice of Court Section" then "News and Events".

A N N E X / A N N E X E

Third Meeting of the Working Group on the Judgments Project (7-10 October 2014)

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Report

From 7 to 10 October 2014, the **Working Group on the Judgments Project** ("the Working Group") met in Hong Kong for its third meeting under the chairmanship of Mr David Goddard QC. The Working Group was composed of 20 participants from 13 Members.[1]

The Working Group warmly thanked the Department of Justice of Hong Kong SAR and the Asia Pacific Regional Office of the Hague Conference on Private International Law for their very generous hospitality and for providing all necessary facilities for a successful and agreeable meeting.

Pursuant to the mandate given by the Council on General Affairs and Policy of the Conference ("the Council") at its April 2014 meeting,[2] the Working Group continued its work towards the preparation of draft provisions for inclusion in a future instrument. The Working Group proceeded on the basis that the future instrument would stand alongside the Choice of Court Convention.

The Working Group made substantial progress by discussing possible approaches to the criteria for recognition and enforcement of judgments under the Convention. A number of papers and proposals prepared by various experts were circulated prior to the meeting, and in the course of the meeting, and were discussed in depth. The Group narrowed the range of possible options for criteria for recognition and enforcement of judgments, and its work at the meeting focused on two main options. The Working Group drafted text to give effect to the suggested approaches. There was consensus on a number of provisions, in relation to which detailed drafting work was carried out.

The Group agreed that inter-sessional work should focus on advancing the working drafts on the criteria for the recognition and enforcement of judgments, for further discussion at its next meeting.

The Working Group looks forward to continuing its progress at its next meeting which is scheduled to take place on 2-6 February 2015 in The Hague. The Working Group will report further to the Council as soon as possible following that meeting.

HONG KONG, 10 October 2014

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[1] The participating Members were Australia, Brazil, China, Cyprus, the European Union, Germany, the Republic of Korea, the Russian Federation, Serbia, Spain, Switzerland, the United Kingdom and the United States of America.

[2] The mandate given by the Council to the Working Group was "to prepare proposals for consideration by a Special Commission in relation to provisions for inclusion in a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters" (Conclusions and Recommendations adopted by the Council of 17 to 20 April 2012, para. 17). At its 2014 meeting, "[t]he Council stressed the importance of this project and welcomed the significant progress made by the Working Group at its February 2014 meeting. The Council invited the Working Group to continue its work as set out in the February 2014 Working Group meeting Report (Annex to Prel. Doc. No 7), including a suggested plan for further steps to be taken towards the development of a Convention in this field. The Permanent Bureau will report to the Council of 2015" (Conclusions and Recommendations adopted by the Council of 8 to 10 April 2014, para. 6).