

Title	HCCH 2015 Principles on Choice of Law: Update
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Mandate(s)	C&D No 57 of CGAP 2024
Objective	To provide an update on the status of work relating to the HCCH 2015 Principles on Choice of Law in International Commercial Contracts
Action to be Taken	For Decision <input checked="" type="checkbox"/> For Approval <input checked="" type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
Annex	N/A
Related Documents	Prel. Doc. No 10B of January 2023 - 2015 Principles on Choice of Law: Updates and possible future work

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HCCH 2015 Principles on Choice of Law: Update

I. Introduction

- 1 The HCCH *Principles on Choice of Law in International Commercial Contracts* (2015 Principles) were approved on 19 March 2015 and continue to serve as an inspiration in the modernisation of national laws and assist in the interpretation and the development of applicable law rules in different regions and jurisdictions.
- 2 At its March 2024 meeting, the Council on General Affairs and Policy (CGAP) mandated the Permanent Bureau (PB) to

[...] continue work, in partnership with relevant subject-matter experts, and subject to available resources, to study the feasibility, desirability and necessity of developing guidance on applicable law in international contracts providing protection to weaker parties. Subject to available resources, CGAP also mandated the PB to continue monitoring developments relating to the 2015 Principles in order to identify areas for review and future work, and to develop promotional materials.¹

This Preliminary Document (Prel. Doc.) reports on the work carried out over the last year in fulfilment of these mandates.

II. Status of work and updates

- 3 This section reports on the current normative projects at the HCCH in which there has been an analysis of the 2015 Principles (A), the 4th edition of the Survey on the HCCH Principles on Choice of Law in International Commercial Contracts (B), the continuing influence of the 2015 Principles (C), and the Choice of Law Dataverse Project from the University of Lucerne (UL) in Switzerland (D).

A. Current normative projects that include an analysis of the 2015 Principles

- 4 The role of party autonomy in international contracts and the potential application of the 2015 Principles in ongoing normative work have been discussed, primarily, in relation to the scope of these normative projects. The PB continues to ensure coordination and alignment between ongoing normative work and the 2015 Principles.
- 5 The Experts' Group (EG) on Central Bank Digital Currencies (CBDCs) has considered that some of the transactions involving wholesale CBDCs may be covered by the 2015 Principles, although questions remain as to the extent to which limitations to party autonomy, and the role of Central Banks in defining the law applicable to transactions involving CBDCs, would narrow the cases in which a choice of law agreement would be, if at all, possible. The EG also noted that Article 11 of the 2015 Principles may be relevant for the forum court to take foreign mandatory rules and public policy considerations into account. Discussions at the meetings of the EG on CBDCs have also concerned default applicable law rules in the absence of a (valid) choice of law.²
- 6 Participants in the Digital Tokens Project have noted that contractual matters in relation to digital tokens could be partially addressed by the 2015 Principles. However, questions remain in particular due to the decentralised and distributed nature of the platforms on which tokens are issued and transacted, and also as to whether the 2015 Principles could be applied to issues relating to

¹ "Conclusions and Decisions of the Council on General Affairs and Policy of the Conference (5-8 March 2024)", C&D No 57, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy" and "Archive (2000-2024)".

² See "Experts' Group on Central Bank Digital Currencies: Report", Prel. Doc. No 3 of December 2024, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy".

consumer protection.³ Similarly to the EG on CBDCs, participants in the Digital Tokens Project have raised questions concerning default applicable law rules in the absence of a (valid) choice of law.⁴

7 Private international law (PIL) issues in relation to platform users, which were first raised at CGAP 2024 in relation to the Digital Economy Project, continue to compound and grow.⁵ In particular, concerns have been raised regarding lacunae in the PIL framework in the case of small and medium-sized enterprises that transact on digital platforms.⁶

8 In relation to the Carbon Markets Project, monitoring work at the PB and the input of volunteer subject-matter experts sitting in their individual capacity for the PB have indicated that carbon markets comprise a complex web of diverse contractual arrangements, often specific to the nature of the projects, and occurring in a vast array of modalities which vary as to industry actors. It has been suggested that future work, if mandated by CGAP, should consider the applicability of the 2015 Principles (as well as the *Convention of 30 June 2005 on Choice of Court Agreements* (2005 Choice of Court Convention)), to contractual relationships in the carbon markets.⁷

B. Impact of the 2015 Principles on arbitration proceedings: Survey

9 Since 2020, the PB has collected data from arbitration centres assessing the impact of the 2015 Principles in arbitration proceedings. The Survey on the HCCH Principles on Choice of Law in International Commercial Contracts (“Survey”) comprises data from arbitration centres located in more than 22 States, and is published on the HCCH website.⁸ The Survey and the publication of its results aim to promote the 2015 Principles and gather insights into the practices of arbitral institutions worldwide in relation to the interpretation of applicable law provisions in international commercial contracts. Of particular note is the indication that the majority of the centres surveyed agreed on the necessity of an international legal instrument to assist arbitrators in determining the applicable law in the absence of a valid choice of law by the parties.

10 In time for the upcoming tenth anniversary of the Principles in 2025, the PB is collecting data for the 4th edition of the Survey, which will comprise more centres with a wider geographical scope. Once available, the results of this updated and expanded survey will be published on the HCCH website in the specialised section for the 2015 Principles.

C. Continued influence of the 2015 Principles

11 From 30 September to 3 October 2024, the PB participated in the Conference on “Development in African Private International Law, with a particular focus on the work of the HCCH and OHADA” organised by the Research Centre for Private International Law in Emerging Countries of the University of Johannesburg (UJ). The Conference touched upon the 2005 Choice of Court Convention, the 2015 Principles, and the *Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (2019 Judgments Convention). It gathered experts from Brazil, Cameroon, the Democratic Republic of Congo, France, Germany, Ghana, Japan, Nigeria, Portugal, South Africa, Switzerland, Tunisia and the United Kingdom. In the

³ See para. 51 of the Report of the First Working Meeting of the Digital Tokens Project in Annex II of “Report on Exploratory Work: Digital Tokens Project”, Prel. Doc. No 4 of November 2024, available on the HCCH website at www.hcch.net (see path indicated in note 2).

⁴ See Prel. Doc. No 4 of November 2024, available on the HCCH website at www.hcch.net (see path indicated in note 2).

⁵ As further detailed this year in “Private International Law Aspects of the Digital Economy: Report”, Prel. Doc. No 5 of December 2025 (paras 20-25), available on the HCCH website at www.hcch.net (see path indicated in note 2).

⁶ See paras 5-8 of “Private International Law Aspects of the Digital Economy: Report”, Prel. Doc. No 5A of February 2024 available on the HCCH website at www.hcch.net (see path indicated in note 1).

⁷ See “Report: Private International Law Aspects of Voluntary Carbon Markets”, Prel. Doc. No 6 of November 2024, available on the HCCH website at www.hcch.net (see path indicated in note 2).

⁸ “Choice of Law in International Commercial Contracts Section”, available on the HCCH website at www.hcch.net under “Instruments” then “2015 Principles on Choice of Law in International Commercial Contracts”.

margins of the Conference, the Research Centre launched the publication *African Principles on the Law Applicable to International Commercial Contracts* (African Principles),⁹ which are “envisaged to become a regional model law, or even a binding regional convention, for the Member States of the African Union”.¹⁰ Significantly, the 2015 Principles constituted one of the primary models for the African Principles.

- 12 The PB continues to monitor developments in Africa in relation to the application of the 2015 Principles, both at the national and regional levels. Notably, one country in the region has already adopted legislation based on the 2015 Principles (Mozambique).

D. Choice of Law Dataverse Project

- 13 In 2023, the University of Lucerne (UL) in Switzerland established the Choice of Law Dataverse (CoLD) Project, under the leadership of Prof. Dr. Daniel Girsberger, the Chair of the Working Group that drafted the 2015 Principles, and Ms Agatha Brandão de Oliveira, Project Coordinator. The CoLD Project comprises the launching of a repository of curated PIL data as the “result of comprehensive global research efforts on the topic of choice of law”.¹¹ The repository will be fed and constantly updated by regional taskforces of PIL experts, who will provide detailed information concerning PIL rules in their jurisdictions or regions of expertise. While the scope of the data collection is global, focus will be placed on enhancing the availability of data from African, Asian and Latin American countries. The planned launch of the repository is 27 February 2026.
- 14 The UL has approached the PB to suggest that the HCCH and UL co-host a conference alongside the launch of the repository, in order to leverage the tenth anniversary of the 2015 Principles to enable further dialogue and input on the influence, reach, and current trends in relation to the application of the 2015 Principles. The proposed timing of the conference is the fourth quarter of 2025, which would allow the results gained from the 4th edition of the Survey on the HCCH Principles on Choice of Law in International Commercial Contracts (see para. 9 above) to be discussed at the conference. Alternatively, another proposed date for the conference is at the launch of the repository on 27 February 2026. If the conference takes place, broad participation from the Global South will be of especial importance. Considering the recent publication of the African Principles mentioned in paragraph 11 above, participation of experts from the region would be particularly encouraged. As the Inter-American Juridical Committee of the Organization of American States (OAS) also has published a *Guide on the Law Applicable to International Commercial Contracts*,¹² experts from the Americas would be encouraged to attend. Likewise, broad participation of experts from Asia would be encouraged, following the publication in 2017 of the Asian Principles of Private International Law, which were also inspired by the 2015 Principles.¹³
- 15 Following the conference, a report, including updates to relevant materials concerning the 2015 Principles, will be made available on the HCCH website. A direct link to the CoLD repository would also be embedded on the HCCH website following its launch.

⁹ For more information and to download the publication of the draft African Principles by Prof. Jan L. Neels, University of Johannesburg, please visit the website: <https://ujonlinepress.uj.ac.za/index.php/ujp/catalog/book/219>

¹⁰ J.L. Neels, *African Principles on the Law Applicable to International Commercial Contracts* (UJ Press 2023). p .1.

¹¹ More information is available via the webpage dedicated to the project: <https://www.choiceoflawdataverse.com>.

¹² Available at: https://www.oas.org/en/sla/dil/docs/publications_Guide_Law_Applicable_International_Commercial_Contracts_Americas_2019.pdf.

¹³ W. Chen and G. Goldstein, (2017) “The Asian Principles of Private International Law: objectives, contents, structure and selected topics on choice of law”, *Journal of Private International Law*, 13(2), pp. 411–434. doi: 10.1080/17441048.2017.1355508.

III. Proposal for CGAP

16 The PB invites CGAP to consider the following C&D:

CGAP mandated the PB to continue work, in partnership with relevant subject-matter experts, and subject to available resources, to study the feasibility, desirability and necessity of developing guidance on applicable law in international contracts providing protection to weaker parties.

CGAP also mandated the PB to continue monitoring developments relating to the 2015 Choice of Law Principles in order to identify areas for review and future work. The PB will report to CGAP 2026. If the report identifies work that would extend beyond monitoring, including the possible development of a PIL framework, CGAP will decide whether such work shall be conducted, with due consideration of resource implications. If CGAP decides that such work is to be conducted, it shall be reflected expressly in the HCCH's Work Programme.