

CONVENTION ON THE CHOICE OF COURT

(Concluded November 25, 1965)

The States signatory to the present Convention,

Desiring to establish common provisions on the validity and effects of agreements on the choice of court,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

In the matters to which this Convention applies and subject to the conditions which it prescribes, parties may by an agreement on the choice of court designate, for the purpose of deciding disputes which have arisen or may arise between them in connection with a specific legal relationship, either –

(1) the courts of one of the Contracting States, the particular competent court being then determined (if at all) by the internal legal system or systems of that State, or

(2) a court expressly named of one of the Contracting States, provided always that this court is competent according to the internal legal system or systems of that State.

Article 2

This Convention shall apply to agreements on the choice of court concluded in civil or commercial matters in situations having an international character.

It shall not apply to agreements on the choice of court concluded in the following matters –

(1) the status or capacity of persons or questions of family law including the personal or financial rights or obligations between parents and children or between spouses;

(2) maintenance obligations not included in sub-paragraph (1);

(3) questions of succession;

(4) questions of bankruptcy, compositions or analogous proceedings, including decisions which may result therefrom and which relate to the validity of the acts of the debtor;

(5) rights in immovable property.

Article 3

This Convention shall apply whatever the nationality of the parties.

Article 4

For the purpose of this Convention the agreement on the choice of court shall have been validly made if it is the result of the acceptance by one party of a written proposal by the other party expressly designating the chosen court or courts.

The existence of such an agreement shall not be presumed from the mere failure of a party to appear in an action brought against him in the chosen court.

The agreement on the choice of court shall be void or voidable if it has been obtained by an abuse of economic power or other unfair means.

Article 5

Unless the parties have otherwise agreed only the chosen court or courts shall have jurisdiction.

The chosen court shall be free to decline jurisdiction if it has proof that a court of another Contracting State could avail itself of the provisions of Article 6(2).

Article 6

Every court other than the chosen court or courts shall decline jurisdiction except –

(1) where the choice of court made by the parties is not exclusive,

(2) where under the internal law of the State of the excluded court, the parties were unable, because of the subject-matter, to agree to exclude the jurisdiction of the courts of that State,

(3) where the agreement on the choice of court is void or voidable in the sense of Article 4,

(4) for the purpose of provisional or protective measures.

Article 7

Where, in their agreement, the parties have designated a court or the courts of a Contracting State without excluding the jurisdiction of other courts, proceedings already pending in any court thus having jurisdiction and which may result in a decision capable of being recognised in the State where the defence is pleaded, shall constitute the basis for the defence of *lis pendens*.

Article 8

Decisions given by a chosen court in the sense of this Convention in one of the Contracting States shall be recognised and enforced in the other Contracting States in accordance with the rules for the recognition and enforcement of foreign judgments in force in those States.

Article 9

Where the conditions for recognition and enforcement of a decision rendered on the basis of an agreement on the choice of court are not fulfilled in another Contracting State, the agreement shall not preclude any party from bringing a new action in the courts of that State.

Article 10

Settlements made in the chosen court in the course of proceedings there pending which are enforceable in the State of that court shall be treated in the same manner as decisions made by that court.

Article 11

This Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 12

Any Contracting State may reserve the right not to recognise agreements on the choice of court concluded between persons who, at the time of the conclusion of such agreements, were its nationals and had their habitual residence in its territory.

Article 13

Any Contracting State may make a reservation according to the terms of which it will treat as an internal matter the juridical relations established in its territory between, on the one hand, physical or juridical persons who are there and, on the other hand, establishments registered on local registers, even if such establishments are branches, agencies or other representatives of foreign firms in the territory in question.

Article 14

Any Contracting State may make a reservation according to the terms of which it may extend its exclusive jurisdiction to the juridical relations established in its territory between, on the one hand, physical or juridical persons who are there and on the other hand establishments registered on local registers, even if such establishments are branches, agencies or other representatives of foreign firms in the territory in question.

Article 15

Any Contracting State may reserve the right not to recognise agreements on the choice of court if the dispute has no connection with the chosen court, or if, in the circumstances, it would be seriously inconvenient for the matter to be dealt with by the chosen court.

Article 16

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 17

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 16.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 18

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 17. The instruments of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 19

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 20

Any State may, not later than the moment of its ratification or accession, make one or more of the reservations mentioned in Articles 12, 13, 14 and 15 of the present Convention. No other reservation shall be permitted.

Each Contracting State may also, when notifying an extension of the Convention in accordance with Article 19, make one or more of the said reservations, with its effect limited to all or some of the territories mentioned in the extension.

Each Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the sixtieth day after the notification referred to in the preceding paragraph.

Article 21

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 17, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 22

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 16, and to the States which have acceded in accordance with Article 18, of the following –

- a) the signatures and ratifications referred to in Article 16;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 17;
- c) the accessions referred to in Article 18 and the dates on which they take effect;
- d) the extensions referred to in Article 19 and the dates on which they take effect;
- e) the reservations and withdrawals referred to in Article 20;
- f) the denunciations referred to in the third paragraph of Article 21.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 25th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a

certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.