

INTER-AMERICAN CONVENTION ON THE LAW APPLICABLE TO INTERNATIONAL CONTRACTS 1994

Signed at Mexico, D.F., Mexico, on March 17, 1994, at the Fifth Inter-American Specialized Conference on Private International Law (CIDIP-V)

The States Parties to this Convention,

REAFFIRMING their desire to continue the progressive development and codification of private international law among member States of the Organization of American States;

REASSERTING the advisability of harmonizing solutions to international trade issues;

BEARING in mind that the economic interdependence of States has fostered regional integration and that in order to stimulate the process it is necessary to facilitate international contracts by removing differences in the legal framework for them,

HAVE AGREED to approve the following Convention:

CHAPTER I

Scope of Application

Article 1

This Convention shall determine the law applicable to international contracts.

It shall be understood that a contract is international if the parties thereto have their habitual residence or establishments in different States Parties or if the contract has objective ties with more than one State Party.

This Convention shall apply to contracts entered into or contracts to which States or State agencies or entities are party, unless the parties to the contract expressly exclude it. However, any State Party may, at the time it signs, ratifies or accedes to this Convention, declare that the latter shall not apply to all or certain categories of contracts to which the State or State agencies and entities are party.

Any State Party may, at the time it ratifies or accedes to this Convention, declare the categories of contract to which this Convention will not apply.

Article 2

The law designated by the Convention shall be applied even if said law is that of a State that is not a party.

Article 3

The provisions of this Convention shall be applied, with necessary and possible adaptations, to the new modalities of contracts used as a consequence of the development of international trade.

Article 4

For purposes of interpretation and application of this Convention, its international nature and the need to promote uniformity in its application shall be taken into account.

Article 5

This Convention does not determine the law applicable to:

- a) questions arising from the marital status of natural persons, the capacity of the parties, or the consequences of nullity or invalidity of the contract as a result of the lack of capacity of one of the parties;
- b) contractual obligations intended for successional questions, testamentary questions, marital arrangements or those deriving from family relationships;
- c) obligations deriving from securities;
- d) obligations deriving from securities transactions;
- e) the agreements of the parties concerning arbitration or selection of forum;
- f) questions of company law, including the existence, capacity, function and dissolution of commercial companies and juridical persons in general.

Article 6

The provisions of this Convention shall not be applicable to contracts which have autonomous regulations in international conventional law in force among the States Parties to this Convention.

CHAPTER 2

Determination of applicable law

Article 7

The contract shall be governed by the law chosen by the parties. The parties' agreement on this selection must be express or, in the event that there is no express agreement, must be evident from the parties' behavior and from the clauses of the contract, considered as a whole. Said selection may relate to the entire contract or to a part of same.

Selection of a certain forum by the parties does not necessarily entail selection of the applicable law.

Article 8

The parties may at any time agree that the contract shall, in whole or in part, be subject to a law other than that to which it was previously subject, whether or not that law was chosen by the parties. Nevertheless, that modification shall not affect the formal validity of the original contract nor the rights of third parties.

Article 9

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.

The Court 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. It shall also take into account the general principles of international commercial law recognized by international organizations.

Nevertheless, if a part of the contract were separable from the rest and if it had a closer tie with another State, the law of that State could, exceptionally, apply to that part of the contract.

Article 10

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 11

Notwithstanding the provisions of the preceding articles, the provisions of the law of the forum shall necessarily be applied when they are mandatory requirements.

It shall be up to the forum to decide when it applies the mandatory provisions of the law of another State with which the contract has close ties.

CHAPTER 3

Existence and Validity of the Contract

Article 12

The existence and the validity of the contract or of any of its provisions, and the substantive validity of the consent of the parties concerning the selection of the applicable law, shall be governed by the appropriate rules in accordance with Chapter 2 of this Convention.

Nevertheless, to establish that one of the parties has not duly consented, the judge shall determine the applicable law, taking into account the habitual residence or principal place of business.

Article

13

A contract between parties in the same State shall be valid as to form if it meets the requirements laid down in the law governing said contract pursuant to this Convention or with those of the law of the State in which the contract is valid or with the law of the place where the contract is performed.

If the persons concerned are in different States at the time of its conclusion, the contract shall be valid as to form if it meets the requirements of the law governing it as to substance, or those of the law of one of the States in which it is concluded or with the law of the place where the contract is performed.

CHAPTER 4

Scope of the applicable law

Article 14

The law applicable to the contract in virtue of Chapter 2 of this Convention shall govern principally:

- 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 to the extent that this may determine payment of compensation;
- 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.

Article 15

The provisions of Article 10 shall be taken into account when deciding whether an agent can obligate its principal or an agency, a company or a juridical person.

Article 16

The law of the State where international contracts are to be registered or published shall govern all matters concerning publicity in respect of same.

Article 17

For the purposes of this Convention, "law" shall be understood to mean the law current in a State, excluding rules concerning conflict of laws.

Article 18

Application of the law designated by this Convention may only be excluded when it is manifestly contrary to the public order of the forum.

CHAPTER 5

General Provisions

Article 19

In a State Party, the provisions of this Convention shall apply to contracts concluded subsequent to its entry into force in that State.

Article 20

This Convention shall not affect the application of other international conventions to which a State Party to this Convention is or becomes a party, insofar as they are pertinent, or those concluded within the context of integration movements.

Article 21

When signing, ratifying or acceding to this Convention, States may formulate reservations that apply to one or more specific provisions and which are not incompatible with the effect and purpose of this Convention.

A State Party may at any time withdraw a reservation it has formulated. The effect of such reservation shall cease on the first day of the third calendar month following the date of notification of withdrawal.

Article 22

In the case of a State which has two or more systems of law applicable in different territorial units with respect to matters covered by the Convention: a) any reference to the laws of the State shall be construed as a reference to the laws in the territorial unit in question; b) any reference to habitual residence or place of business in that State shall be construed as a reference to habitual residence or place of business in a territorial unit of that State.

Article 23

A State within which different territorial units have their own systems of law in regard to matters covered by this Convention shall not be obliged to apply this Convention to conflicts between the legal systems in force in such units.

Article 24

If a State has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall take effect ninety days after the date of their receipt.

CHAPTER 6

Final Clauses

Article 25

This Convention shall be open to signature by the member States of the Organization of American States.

Article 26

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 27

This Convention shall remain open for accession by any other State after it has entered into force. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 28

This Convention shall enter into force for the ratifying States on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 29

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State.

Article 30

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of the

Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any, and of their withdrawal.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, do hereby sign the present Convention.

DONE AT MEXICO, D.F., MEXICO, this seventeenth day of March, one thousand nine hundred and ninety-four.