



**Asia-Pacific
Economic Cooperation**

2015/SOM3/EC/WKSP4/012

Session 11


Principles on Choice of Law in International Commercial Contracts (Hague Principles)

Submitted by: HCCH



APEC
PHILIPPINES
2 0 1 5

**Workshop on Effective Enforcement of Business
Contracts and Efficient Resolution of Business
Disputes Through the Hague Choice of Court
Agreements Convention
Cebu, Philippines
1 September 2015**



APEC
Asia-Pacific
Economic Cooperation

**United Nations
UNCITRAL**
Regional Centre for Asia and the Pacific

HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAÏE
DE DROIT INTERNATIONAL PRIVÉ

**Principles on Choice of Law in International Commercial Contracts
(Hague Principles)**

APEC Workshop
Cebu, Philippines, 1 September 2015

Christophe Bernasconi
Secretary General

Party Autonomy in International Trade



```
graph LR; A[What does international trade need?] --> B[Certainty and predictability enhancing effectiveness of the transactions, reducing costs]; C[How to achieve certainty and predictability in international trade?] --> D[Parties' choices are respected (Party Autonomy)]; E[What is the status of party autonomy in choice of law in international commercial contracts?] --> F[Widely, but not universally accepted; different practices];
```

What does international trade need? → Certainty and predictability enhancing effectiveness of the transactions, reducing costs

How to achieve certainty and predictability in international trade? → Parties' choices are respected (Party Autonomy)

What is the status of party autonomy in **choice of law** in international commercial contracts? → Widely, but not universally accepted; different practices

The Hague Principles in a nutshell

- First normative *soft-law* instrument developed by the HCCH; first drawn up by Working Group, then approved by Members of HCCH on **19 March 2015**
- A “package” consisting of Preamble and **12 Articles**, with an Introduction and a **Commentary**
- Designed to **promote party autonomy** in international commercial contracts
 - By acknowledging that parties to a contract may be best positioned to determine which set of legal norms is most suitable for their transaction, party autonomy enhances *predictability* and *legal certainty* – important conditions for effective cross-border trade and commerce
- Hague Principles also set balanced **boundaries**
 - provide a refinement of the concept of party autonomy where it is already accepted
- In essence, Principles may be considered an **international code of current best practice** in relation to party autonomy in international commercial contracts
- They provide a **comprehensive blueprint** to guide users in the creation, reform, or interpretation of choice of law regimes at the national, regional, or international level

Main Provisions

Freedom to choose the applicable law (*Art. 2(1)*)

Different laws governing different parts of the contract (*Art. 2(2)*)

Modification of the applicable law at any time (*Art. 2(3)*)

No connection to the transaction or the parties needed (*Art. 2(4)*)

Expressly or tacitly choose the applicable law (*Art. 4*)

No requirement as to the form of choice of law (*Art. 5*)

Requiring consent (*Art. 6(2)*)

Note that the Principles do *not* provide a unified conflicts rules for applicable law *in the absence* of a choice

Other Important Provisions

Choosing Non-State Law

Art. 3 May select rules that are:

- generally accepted on an international, supranational or regional level
- neutral and balanced set of rules,
- unless the law of the forum provides otherwise

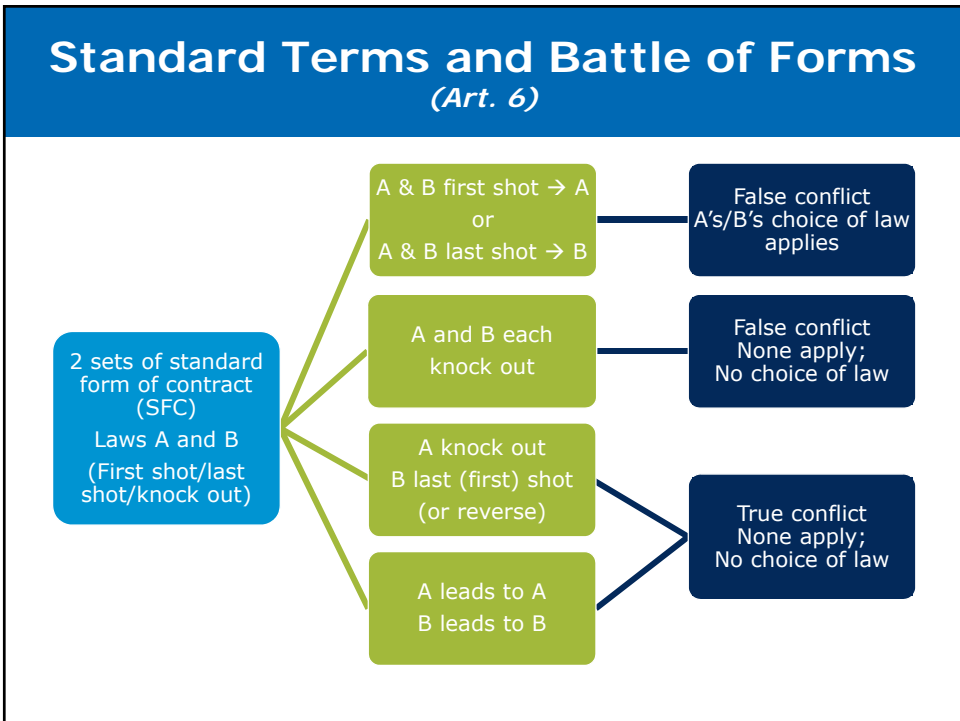
When selecting non-State law:

- “gap filling” law may be needed

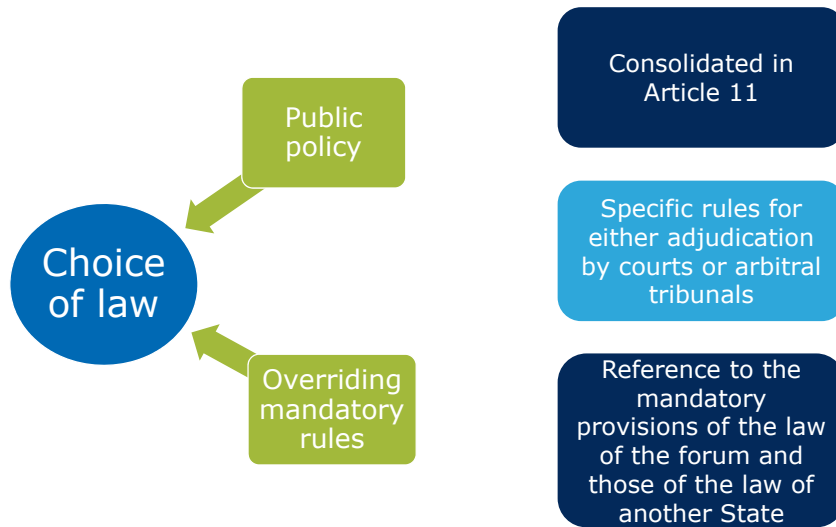
Standard Terms and Battle of Forms

Art. 6

- Providing rules for two sets of standard form which are conflicting (battle of forms)
- Limited exception clause



Limitation of the Choice of Law



Early Achievements



20 January 2015

- Paraguay promulgated *Law No 5393 on the Law Applicable to International Contracts*, based on the Hague Principles



8 July 2015

- UNCITRAL endorses the Principles during its Forty-eighth session
- First HCCH instrument officially endorsed by UNCITRAL

Christophe Bernasconi

cb@hcch.nl



www.hcch.net