



Organized by the Department of Justice of Hong Kong, China
in collaboration with the Asia Pacific Regional Office
of the Hague Conference on Private International Law
and the UNCITRAL Regional Centre for Asia and the Pacific

**REPORT ON THE APEC EC 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**

The Department of Justice of Hong Kong, China, in collaboration with the Asia Pacific Regional Office of the Hague Conference on Private International Law (“HCCH”) and the Regional Centre for Asia and the Pacific of the United Nations Commission on International Trade Law (“UNCITRAL”) organized under the auspices of the APEC Economic Committee and its FoC on Strengthening Economic and Legal Infrastructure (SELI) a Workshop on effective enforcement of business contracts and efficient resolution of business disputes through the Hague Choice of Court Agreements Convention in Cebu, the Philippines on 1 September 2015.

This Workshop gathered around 40 delegates and participants from APEC member economies and international organizations. It was aimed to (a) enhance understanding of relevant international instruments on how they may greatly facilitate cross-border transactions and resolution of business disputes among APEC member economies; (b) build the specific capacity of APEC member economies to consider adoption or use of such instruments to strengthen their economic and legal infrastructure; and (c) contribute to the development of a network of the relevant APEC officers, with a view to facilitating long-term information and experience sharing.

THE WORKSHOP:

Having regard to the Declaration by APEC Economic Leaders on 10 November 2014 which, *inter alia*, “recognized the role of internationally recognized private international law instruments such as the Hague Conventions in facilitating cross-border trade and investment, enhancing ease of doing business, and fostering effective enforcement of contracts and efficient settlement of business disputes” and encouraged “wider use of these instruments which would contribute to APEC’s regional

integration, connectivity and structural reform agenda”;

Building upon the conclusions and recommendations from the previous *APEC Workshop on Simplified Authentication Process for Production of Public Documents Abroad through the Hague Apostille Convention* held in Medan, Indonesia on 27 June 2013 and *Workshop on Ease of Doing Business through Hague Conventions* held in Beijing, China on 12 August 2014;

Recognizing that the *Hague Convention of 30 June 2005 on Choice of Court Agreements* (“Choice of Court Convention”), which will enter into force on 1 October 2015, is set to provide legal certainty and predictability in relation to the use of choice of court clauses in business to business contracts as an effective global means to facilitate cross-border trade and investment by allowing for effective litigation management;

Welcoming the approval of the *Principles on Choice of Law in International Commercial Contracts* (“Hague Principles”) on 19 March 2015 by the Hague Conference, as well as their subsequent endorsement by UNCITRAL in July 2015, and recognizing their potential to provide legal certainty and predictability in relation to the choice of law in business to business contracts;

Considering the important role played by the *United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)* (“CISG”) in facilitating the formation of contracts, performance of contracts and remedies available to the parties, thereby facilitating international trade;

Noting that a number of member economies do already apply, or are considering application of some or all of these international instruments;

CONCLUDED AND RECOMMENDED:

CHOICE OF COURT CONVENTION

1. The delegates and participants acknowledged that the Choice of Court Convention is a global instrument which establishes clear rules on international jurisdiction and provides for recognition and enforcement of foreign judgments in disputes arising out of international cases in civil and commercial matters involving an exclusive choice of court agreement.
2. The delegates and participants considered that the harmonized rules under the Choice of Court Convention provide litigants and courts with a simple, predictable and effective legal framework, which will greatly benefit the international business community and foster international trade and investment.
3. The delegates and participants welcomed that some APEC member economies are actively considering the Choice of Court Convention and encouraged the competent authorities of all other member economies to do the same.

HAGUE PRINCIPLES

4. The delegates and participants recognised the potential of the Hague Principles to enhance certainty and predictability within the parties' primary contractual arrangement and acknowledged that parties to a contract may be in the best position to determine which set of legal norms is most suitable for their transaction, thereby helping to facilitate cross-border trade and investment.
5. The delegates and participants recognised the Hague Principles as a non-binding set of principles which they could encourage their economies to incorporate into their domestic legal infrastructure in a manner appropriate for the circumstances of each economy, such that the Hague Principles, as a guide to "best practices" or blueprint, could steer domestic law reform on choice of law and operate alongside existing instruments on the subject.

CISG

6. The delegates and participants appreciated the growing need to harmonize rules across borders in the formation and performance of contracts.
7. The delegates and participants recognized that the CISG, being a neutral body of rules that can be easily accepted in light of its transnational nature and of the wide availability of interpretative materials, provides a modern, uniform and fair regime for contracts for the international sale of goods, and hence contributes significantly to introducing certainty in commercial exchanges and decreasing transaction costs.
8. The delegates and participants encouraged their economies to adopt the CISG or further promote the use of the CISG, which may help to strengthen their economic and legal infrastructure.

COLLABORATION WITH INTERNATIONAL ORGANIZATIONS

9. The delegates and participants recalled the 2014 APEC Joint Ministerial Statement that, *inter alia*, welcomed "the joint efforts of the EC and the Asia Pacific Regional Office of the Hague Conference on Private International Law (HCCH), as well as other private international law organizations such as the UN Commission on International Trade Law (UNCITRAL) to build awareness of private international law instruments to facilitate cross-border trade and investment, enhance ease of doing business, and foster effective enforcement of contracts and efficient settlement of business disputes".
10. The delegates and participants recognized the value of assistance and support that may be provided by the Permanent Bureau of the HCCH including its Asia Pacific Regional Office and the UNCITRAL Secretariat including its Regional Centre for Asia and the Pacific, and warmly welcome activities similar to this Workshop in the future as well as further opportunity for

enhanced collaboration between these organizations and APEC.