

## **DRAFT**

### **LAW N° ...**

## **“REGARDING THE APPLICABLE LAW TO INTERNATIONAL CONTRACTS”**

### **THE PARAGUAYAN CONGRESS SANCTIONS THIS LAW:**

#### **Article 1- Scope of application**

This law regulates the choice of applicable law in international contracts when one of the parties acts in exercise of their business or profession. Its provisions are not applied to consumer, employer, franchising contracts, agency and distribution.

#### **Article 2- Internationality of the contract**

The applicability of this law to international contracts shall be interpreted in the most broad way possible, and will solely be excluded those agreements in which all of the relevant elements are linked with only one State.

#### **Article 3- Issues not addressed in this law**

This law does not address the law governing the:

- a) Capacity of natural persons;
- b) Arbitration agreements and agreements on choice of court;
- c) Companies or other collective bodies and trusts;
- d) Insolvency procedures;
- e) Issue of whether an agent is able to bind a principal to a third party.

#### **Article 4- Freedom of choice**

1. A contract is governed by the law chosen by the parties.
2. The parties may choose:
  - a) The law applicable to the whole contract or to only part of it; and
  - b) Different laws for different parts of the contract, in the measure that these are clearly distinguished.
3. The choice may be made or modified at any time. A choice or modification made after the contract has been concluded shall not prejudice its formal validity or the rights of third parties.
4. No connection is required between the law chosen and the parties or their transaction.

## **Article 5- Rules of law**

In this law, a reference to law includes rules of law that are generally accepted on a non-state origin, as a neutral and balanced set of rules.

## **Article 6 – Express and tacit choice**

A choice of law, or any modification of a choice of law, must be made expressly or appear clearly from the provisions of the contract or the circumstances. An agreement between the parties to confer jurisdiction on a court or an arbitral tribunal to determine disputes under the contract is not in itself equivalent to a choice of law.

## **Article 7- Formal validity of the choice of law**

A choice of law is not subject to any requirement as to form unless otherwise agreed by the parties.

## **Article 8- Agreement on the choice of law**

1. To determine whether the parties have agreed to a choice of law is determined by the law that was purportedly agreed to.
2. If the parties have used standard terms designating different laws and under both of these laws the same standard terms prevail, the law designated in those terms applies; if under these laws different standard terms prevail, or if no standard terms prevail, there is no choice of law.
3. The law of the State in which a party has its establishment determines whether that party has consented to the choice of law if, under the circumstances, it would not be reasonable to make that determination under the law specified in this article.

## **Article 9- Separability of the choice of law clause**

A choice of law cannot be contested solely on the ground that the contract to which it applies is not valid.

## **Article 10- Exclusion of renvoi**

A choice of law does not refer to rules of conflict of laws of the law chosen by the parties unless the parties expressly provide otherwise.

## **Article 11- Absence or inefficiency of the choice**

1. 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.
2. The tribunal 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.

## **Article 12- Equitative harmonization of interests**

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.

### **Artículo 13 - Ámbito de aplicación del derecho**

#### **Article 13- Scope of application of the law**

1. The law applicable in virtue of this law shall govern all aspects of the contract between the parties, particularly:

- 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;
- 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;
- f) the charge of the proof of legal presumptions; and
- g) the precontractual obligations.

2. Paragraph 1(e) does not exclude the application of any other law that confirms the formal validity of the contract.

#### **Article 14- Contractual assignment**

In the case of contractual assignment of a creditor's rights against a debtor arising from a contract between the debtor and creditor:

- a) if the parties to the contract of assignment have chosen the law governing that contract, the law chosen governs the mutual rights and obligations of the creditor and the assignee arising from their contract;
- b) if the parties to the contract between the debtor and creditor have chosen the law governing that contract, the law chosen governs (1) whether the assignment can be invoked against the debtor, (2) the rights of the assignee against the debtor, and (3) whether the obligations of the debtor have been discharged.

#### **Article 15- Registration and publicity**

If the registration or publicity of determined contracts is mandatory in a state, such acts will be ruled by the law of that State.

#### **Article 16- States with more than one internal judicial system**

In the case of a State which has two or more systems of law applicable in different territorial units, the determination of which system results applicable shall be done according to the chosen law. If it is not possible to accomplish this, art. 11 shall be applied.

#### **Article 17- Public policy and mandatory norms**

1. The parties' choice of law does not forbid the judge to apply the mandatory norms of Paraguayan law which, since this law, shall prevail even in presence of the choice of foreign law.
2. The judge may take into consideration the mandatory norms of other States closely linked with the case taking into account the consequences of its application or not.
3. The judge may exclude the application of a provision of the law chosen by the parties if and to the extent that the result of such application would be manifestly incompatible with fundamental notions of public policy.

#### **Article 18- Derogations**

Articles 14, 17, 297, 687 and 669, section b of the Civil Code as long as they refer to international contracts, become derogated by this law. Every other provision of special laws contrary to this law in relation to the applicable law in international contracts is also derogated.