

The States signatories to the present Convention,

Desiring to establish common provisions concerning the law applicable to agency,

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

Chapter 1 - Scope Of The Convention

Article 1

The present Convention determines the law applicable to relationships of an international character arising where a person, the agent, has the authority to act, acts or purports to act on behalf of another person, the principal, in dealing with a third party.

It shall extend to cases where the function of the agent is to receive and communicate proposals or to conduct negotiations on behalf of other persons. The Convention shall apply whether the agent acts in his own name or in that of the principal and whether he acts regularly or occasionally.

Article 2

This Convention shall not apply to:

- (a) the capacity of the parties;
- (b) requirements as to form;
- (c) agency by operation of law in family law, in matrimonial property regimes, or in the law of succession;
- (d) agency by virtue of a decision of a judicial or quasi-judicial authority or subject to the direct control of such an authority;
- (e) representation in connection with proceedings of a judicial character;
- (f) the agency of a shipmaster acting in the exercise of his functions as such.

Article 3

For the purposes of this Convention:

(a) an organ, officer or partner of a corporation, association, partnership or other entity, whether or not possessing legal personality, shall not be regarded as the agent of that entity in so far as, in the exercise of his functions as such, he acts by virtue of an authority conferred by law or by the constitutive documents of that entity;

(b) a trustee shall not be regarded as an agent of the trust, of the person who has created the trust, or of the beneficiaries.

Article 4

The law specified in this Convention shall apply whether or not it is the law of a Contracting State.

Chapter 2 - Relations Between Principal And Agent

Article 5

The internal law chosen by the principal and the agent shall govern the agency relationship between them.

This choice must be express or must be such that it may be inferred with reasonable certainty from the terms of the agreement between the parties and the circumstances of the case.

Article 6

In so far as it has not been chosen in accordance with Article 5, the applicable law shall be the internal law of the State where, at the time of formation of the agency relationship, the agent has his business establishment or, if he has none, his habitual residence.

However, the internal law of the State where the agent is primarily to act shall apply if the principal has his business establishment or, if he has none, his habitual residence in that State.

Where the principal or the agent has more than one business establishment, this Article refers to the establishment with which the agency relationship is most closely connected.

Article 7

Where the creation of the agency relationship is not the sole purpose of the agreement, the law specified in Articles 5 and 6 shall apply only if:

- (a) the creation of this relationship is the principal purpose of the agreement,
- or
- (b) the agency relationship is severable.

Article 8

The law applicable under Articles 5 and 6 shall govern the formation and validity of the agency relationship, the obligations of the parties, the conditions of performance, the consequences of non-performance, and the extinction of those obligations.

This law shall apply in particular to:

- (a) the existence and extent of the authority of the agent, its modification or termination, and the consequences of the fact that the agent has exceeded or misused his authority;
- (b) the right of the agent to appoint a substitute agent, a sub-agent or an additional agent;
- (c) the right of the agent to enter into a contract on behalf of the principal where there is a potential conflict of interest between himself and the principal;
- (d) non-competition clauses and del credere clauses;
- (e) clientele allowances (l'indemnité de clientèle);
- (f) the categories of damage for which compensation may be recovered.

Article 9

Whatever law may be applicable to the agency relationship, in regard to the manner of performance the law of the place of performance shall be taken into consideration.

Article 10

This Chapter shall not apply where the agreement creating the agency relationship is a contract of employment.

Chapter 3 - Relations With The Third Party

Article 11

As between the principal and the third party, the existence and extent of the agent's authority and the effects of the agent's exercise or purported exercise of his authority shall be governed by the internal law of the State in which the agent had his business establishment at the time of his relevant acts.

However, the internal law of the State in which the agent has acted shall apply if:

- (a) the principal has his business establishment or, if he has none, his habitual residence in that State, and the agent has acted in the name of the principal; or
- (b) the third party has his business establishment or, if he has none, his habitual residence in that State; or
- (c) the agent has acted at an exchange or auction; or
- (d) the agent has no business establishment.

Where a party has more than one business establishment, this Article refers to the establishment with which the relevant acts of the agent are most closely connected.

Article 12

For the purposes of Article 11, first paragraph, where an agent acting under a contract of employment with his principal has no personal business

establishment, he shall be deemed to have his establishment at the business establishment of the principal to which he is attached.

Article 13

For the purposes of Article 11, second paragraph, where an agent in one State has communicated with the third party in another, by message, telegram, telex, telephone, or other similar means, the agent shall be deemed to have acted in that respect at the place of his business establishment or, if he has none, of his habitual residence.

Article 14

Notwithstanding Article 11, where a written specification by the principal or by the third party of the law applicable to questions falling within Article 11 has been expressly accepted by the other party, the law so specified shall apply to such questions.

Article 15

The law applicable under this Chapter shall also govern the relationship between the agent and the third party arising from the fact that the agent has acted in the exercise of his authority, has exceeded his authority, or has acted without authority.

Chapter 4 - General Provisions

Article 16

In the application of this Convention, effect may be given to the mandatory rules of any State with which the situation has a significant connection, if and in so far as, under the law of that State, those rules must be applied whatever the law specified by its choice of law rules.

Article 17

The application of a law specified by this Convention may be refused only where such application would be manifestly incompatible with public policy (ordre public).

Article 18

Any Contracting State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right not to apply this Convention to:

- (1) the agency of a bank or group of banks in the course of banking transactions;
- (2) agency in matters of insurance;
- (3) the acts of a public servant acting in the exercise of his functions as such on behalf of a private person.

No other reservation shall be permitted. Any Contracting State may also, when notifying an extension of the Convention in accordance with Article 25, make one or more of these reservations, with its effect limited to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

Article 19

Where a State comprises several territorial units each of which has its own rules of law in respect of agency, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Convention.

Article 20

A State within which different territorial units have their own rules of law in respect of agency shall not be bound to apply this Convention where a State with a unified system of law would not be bound to apply the law of another State by virtue of this Convention.

Article 21

If a Contracting State has two or more territorial units which have their own rules of law in respect of agency, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, and shall state expressly the territorial units to which the Convention applies.

Article 22

The Convention shall not affect any other international instrument containing provisions on matters governed by this Convention to which a Contracting State is, or becomes, a Party.

Chapter 5 - Final Clauses

Article 23

The Convention is open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Thirteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 24

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 25

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the 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 at the time the Convention enters into force for that State. Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 26

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 23 and 24.

Thereafter the Convention shall enter into force:

- (1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- (2) for a territory to which the Convention has been extended in conformity with Articles 21 and 25, on the first day of the third calendar month after the notification referred to in those Articles.

Article 27

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 26, even for States which subsequently have ratified, accepted, approved it or acceded to it.

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 Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units 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 28

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify to the States Members of the Conference, and the States which have acceded in accordance with Article 24, the following:

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 23;
- (2) the accessions referred to in Article 24;
- (3) the date on which the Convention enters into force in accordance with Article 26;
- (4) the extensions referred to in Article 25;
- (5) the declarations referred to in Article 21;
- (6) the reservations and the withdrawals of reservations referred to in Article 18;
- (7) the denunciations referred to in Article 27.

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

Done at The Hague, on the 14th of March 1978 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 Kingdom of the Netherlands and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Thirteenth Session.