

Consultation Paper on the Hague Convention on Choice of Court Agreements concluded on 30 June 2005

Summary

1. Since 1996, a Special Commission of the Hague Conference on Private International Law (the “Hague Conference”) has met regularly with the aim of concluding a worldwide convention on jurisdiction and recognition and enforcement of judgments in civil and commercial matters.

2. It was clear, after a Special Commission meeting in June 2001, that there were significant differences among States participating in the negotiation of such a comprehensive convention. It was also clear that a more realistic goal would be to conclude a convention whose scope would be limited to jurisdiction based on choice of court agreements and recognition and enforcement of judgments arising from such agreements.

3. Building on the negotiations held since 1996, the Special Commission last convened in June 2005. After two weeks of intensive negotiations, the text of the Convention on Choice of Court Agreements (the “Convention”) was finalised and it was adopted at the twentieth session of the Hague Conference on 30 June 2005.

4. The Convention is intended to serve as a parallel instrument to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. While the basis for the New York Convention is an arbitration agreement, the basis for the Convention is an exclusive choice of court agreement between parties in a business-to-business relationship. Where such an agreement is held to be valid under the rules established by the Convention, the resulting judgment given by the chosen court will be recognised and enforced in any Contracting State to the Convention.

5. This [consultation paper](#) outlines the provisions of the Convention. A copy of the Convention is attached as Appendix to the paper. The text of the Convention may also be downloaded from the website of the Hague Conference at http://www.hcch.net/index_en.php?act=conventions.text&cid=98. This

consultation paper may also be found on the website of the Department of Justice at www.doj.gov.hk.

6. In addition, useful reference may be made to the Explanatory Report on the Convention drawn up by Professors Trevor C Hartley and Masato Dogauchi, Rapporteurs to the Special Commission, and published by the Hague Conference in May 2007. The Report is available at this website: http://www.hcch.net/index_en.php?act=publications.details&pid=3959. It sets out the background to the drafting and adoption of the Convention and provides an overview as well as a full commentary on the Convention. The assistance derived in the preparation of this consultation paper from the Explanatory Report is gratefully acknowledged.

7. Before a decision is taken to seek the application of the Convention to Hong Kong, the Government would like to consider the views of interested parties, including members of the two legal professions and the business community who will be most affected by the Convention if it is applied to Hong Kong.

8. Hong Kong is represented at the Special Commission as part of the Chinese delegation*. States which participated in the negotiation of the Convention included China, the European Community (representing all EU States), the United States of America, Russia, Ukraine, Canada, Mexico, Japan, Korea, Australia and New Zealand. The Hong Kong Special Administrative Region Government is now seeking comments on the Convention. In particular, views are invited with regard to the question of whether the Convention should be applied to Hong Kong.

9. Comments may be addressed to the Treaties and Law Unit, International Law Division, Department of Justice, 47th Floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong (fax no: 2877 2130; e-mail: ild@doj.gov.hk) on or before 21 September 2007. Inquiries on this subject should be directed to Mr Peter Wong (tel: 2867 4745; e-mail: peterwong@doj.gov.hk) of the Treaties and Law Unit, International Law Division, Department of Justice, also at the above address.

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* Membership of the Hague Conference is limited to sovereign States.