

Convention on The Law Applicable to Agency, The Hague, 14 March 1978

Hague Conference on Private International Law

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Law

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1 **Convention on The Law Applicable to Agency, The
Hague, 14 March 1978**

2 **[Preamble]**

3 The States signatories to the present Convention,
4 Desiring to establish common provisions concerning the law appli-
5 cable to agency, Have resolved to conclude a Convention to this
6 effect, and have agreed upon the following provisions:

7 **CHAPTER 1 - Scope Of The Convention**

8 **Article 1**

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

13 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 occasion-
ally.

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 au- 14
thority or subject to the direct control of such an authority;

(e) representation in connection with proceedings of a judicial char- 15
acter;

(f) the agency of a shipmaster acting in the exercise of his functions 16
as such.

Article 3 17

For the purposes of this Convention: 18

(a) an organ, officer or partner of a corporation, association, part- 19
nership or other entity, whether or not possessing legal personal-
ity, 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 au-
thority 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 20
person who has created the trust, or of the beneficiaries.

Article 4 21

The law specified in this Convention shall apply whether or not it is 22
the law of a Contracting State.

**CHAPTER 2 - Relations Between Principal And 23
Agent**

Article 5 24

The internal law chosen by the principal and the agent shall govern 25

the agency relationship between them.

26 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.

27 **Article 6**

28 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 busi-
ness establishment or, if he has none, his habitual residence.

29 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.

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

31 **Article 7**

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

33 (a) the creation of this relationship is the principal purpose of the
agreement, or

34 (b) the agency relationship is severable.

35 **Article 8**

36 The law applicable under Articles 5 and 6 shall govern the forma-

tion 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:

37

(a) the existence and extent of the authority of the agent, its mod- 38
ification 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 39
or an additional agent;

(c) the right of the agent to enter into a contract on behalf of the prin- 40
cipal where there is a potential conflict of interest between himself
and the principal;

(d) non-competition clauses and del credere clauses; 41

(e) clientele allowances (l'indemnité de clientèle); 42

(f) the categories of damage for which compensation may be re- 43
covered.

Article 9

44

45 Whatever law may be applicable to the agency relationship, in re-
gard to the manner of performance the law of the place of perfor-
mance shall be taken into consideration.

Article 10

46

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

CHAPTER 3 - Relations With The Third Party

48 Article 13

60

49 Article 11

50 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

51 State in which the agent had his business establishment at the time of his relevant acts.

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

53 (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

54 (b) the third party has his business establishment or, if he has none, his habitual residence in that State; or

55 (c) the agent has acted at an exchange or auction; or

56 (d) the agent has no business establishment.

57 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.

58 Article 12

59 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

62

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

64

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

66

Article 16

67

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.

68

69 **Article 17**

70 The application of a law specified by this Convention may be re-
71 fused only where such application would be manifestly incompati-
72 ble with public policy (ordre public).

71 **Article 18**

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

73 (1) the agency of a bank or group of banks in the course of banking
74 transactions;

74 (2) agency in matters of insurance;

75 (3) the acts of a public servant acting in the exercise of his functions
76 as such on behalf of a private person.

76 No other reservation shall be permitted. Any Contracting State may
77 also, when notifying an extension of the

77 Convention in accordance with Article 25, make one or more of
78 these reservations, with its effect limited to all or some of the terri-
79 tories mentioned in the extension.

78 Any Contracting State may at any time withdraw a reservation
79 which it has made; the reservation shall cease to have effect on
80 the first day of the third calendar month after notification of the with-
81 drawal.

79 **Article 19**

80 Where a State comprises several territorial units each of which has
81 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

81

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.

82

Article 21

83

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.

84

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

85

Article 22

86

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.

87

CHAPTER 5 - Final Clauses

Article 23

90 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.

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

Article 24

93 Any other State may accede to the Convention.

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

Article 25

96 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 re-
sponsible, 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

98 The Convention shall enter into force on the first day of the third

88 calendar month after the deposit of the third instrument of ratifica-
tion, acceptance, approval or accession referred to in Articles 23
and 24.

89

Thereafter the Convention shall enter into force:

99

(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;

100

(2) for a territory to which the Convention has been extended in con-
formity with Articles 21 and 25, on the first day of the third calendar
month after the notification referred to in those Articles.

101

Article 27

102

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.

103

If there has been no denunciation, it shall be renewed tacitly every
five years.

104

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.

105

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.

106

Article 28

107

The Ministry of Foreign Affairs of the Kingdom of the Netherlands

108

shall notify to the States Members of the Conference, and the States which have acceded in accordance with Article 24, the following:

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

[Post Provisions]

[Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; & Deposited Clauses)]

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

117 Done at The Hague, on the ... day of ... 19...*, 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.

118 *The Convention was signed on the 14th of March 1978 and thus bears that date.

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