

The Recognition of Exclusive Choice of Court Agreements: United Arab Emirates Perspective and the 2005 Hague Convention on Choice of Court Agreements

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Abstract : The 2005 Hague Convention seeks to ensure legal certainty and predictability between parties in international business transactions. It harmonises exclusive choice of court agreements at the international level between parties to commercial transactions and to govern the recognition and enforcement of judgments resulting from proceedings based on such agreements to promote international trade and investment. Although the choice of court agreements is significant in international business transactions, the United Arab Emirates refuse to recognise it by Article 24 of the Federal Law No. 11 of 1992 of the Civil Procedure Code. A review of judicial judgments in United Arab Emirates up to the present day has revealed that several cases appeared before the Court in different states of United Arab Emirates regarding the recognition of exclusive choice of court agreements. In all the cases, the courts regarded the exclusive choice of court agreements as a direct assault on state authority and sovereignty and refused categorically to recognize choice of court agreements by refusing to stay proceedings in favor of the foreign chosen court. This has created uncertainty and unpredictability in international business transaction in the United Arab Emirates. In June 2011, the first Gulf Judicial Seminar on Cross-Frontier Legal Cooperation in Civil and Commercial Matters was held in Doha, Qatar. The Permanent Bureau of the Hague Conference attended the conference and invited the states of the Gulf Cooperation Council (GCC) namely, The United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait to adopt some of the Hague Conventions, one of which was the Hague Convention on Choice of Court Agreements. One of the recommendations of the conference was that the GCC states should research 'the benefits of predictability and legal certainty provided by the 2005 Convention on Choice of Court Agreements and its resulting advantages for cross-border trade and investment' for possible adoption of the Hague Convention. Up to today, no further step has been taken by the any of the GCC states to adapt the Hague Convention nor did they conduct research on the benefits of predictability and legal certainty in international business transactions. This paper will argue that the approach regarding the recognition of choice of court agreements in United Arab Emirates states can be improved in order to help the parties in international business transactions avoid parallel litigation and ensure legal certainty and predictability. The focus will be the uncertainty and gaps regarding the choice of court agreements in the United Arab Emirates states. The Hague Convention on choice of court agreements and the importance of harmonisation of the rules of choice of court agreements at international level will also be discussed. Finally, The feasibility and desirability of recognizing choice of court agreements in United Arab Emirates legal system by becoming a party to the Hague Convention will be evaluated.

Keywords : choice of court agreements, party autonomy, public authority, sovereignty

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