Abstract

The 2005 Hague Convention on Choice of Court Agreements (hereinafter the Convention) is genuinely a worldwide convention on recognition and enforcement of judgments. In comparison with the original ambitious Project – a comprehensive global convention on jurisdiction and recognition and enforcement of foreign judgments in civil and commercial matters, the Convention is downsized radically into a stand-alone convention on choice of court agreements which become the only way to establish recognized jurisdiction under the Convention. Compared with the original purpose of establishing an international jurisdiction and judgments agreement, this Convention is rather disappointing. However, it is not difficult to accept this fact on the basis of the political realities and of the inherent difficulties during the negotiation of the Convention. Furthermore, the Convention should not be labeled as a mere failure by saying that its conclusion did not achieve the original aim of establishing a uniform international system on recognition and enforcement of foreign judgments. The Convention is a first step toward the accomplishment of such an aim. It provides a solution to fill a major current gap, and maintain the confidence necessary for further expansion of an enforcement regime. That the light might not burn as brightly as first intended should not result in a return to the darkness of a pre-Convention regime.

For China, as the growing development of the international civil and commercial business transactions, the need of a worldwide convention on recognition and enforcement of judgments will appear gradually. As a result, it is necessary to analyze whether China should ratify the Convention. After exploring the issues of the Convention completely and thoroughly and comparing the provisions of the Convention with the Chinese law, it is submitted that there are no irreconcilable conflicts between Chinese law and the Convention, and the ratification of the Convention can help China to establish a better new international choice of court agreement system.

In order to examine the issues of the Convention completely and thoroughly, this

thesis is composed of seven parts as follows:

Entitled "Introduction", Part I discusses the background of the Hague Judgments Project and introduces the Concluding Process of the Convention, then elaborates the aims of this thesis - the ratification of the Convention will help China to establish a new choice of court agreements system so as to promote the development of international business transactions.

Entitled "Choice of Court Agreement", Part II discusses the choice of court agreement system briefly. It discusses its effects and two kinds of choice of court agreement, and then focuses on the formal requirements in the Convention and Chinese law. After that, this part also introduces the implied choice of court agreement. In this part, it analyzes the exclusive choice of court agreement which is the basic ground of jurisdiction of the Convention.

Entitled "The scope of the Convention", Part III analyzes the scope of application of the Convention. Because of the scope of application of the Convention concerning its scope of validity of the Convention, the discussion of it helps to apply the Convention properly and to provide prerequisite of feasibility on whether China should ratify the Convention.

Entitled "Obligation of courts chosen", Part IV discusses the first key provision of the Convention. According to this provision, the court chosen must hear the case when proceedings are brought before it. Furthermore, Chinese law does not conflict with the provisions of the Convention, and then does not incur a negative effect on the ratification of the Convention.

Entitled "Obligation of courts not chosen", Part V discusses the second key provision of the Convention. According to this provision, any court not chosen before which proceedings are brought shall refuse to hear the cases. In Chinese law, the courts not chosen will respect the choice of court agreements and confirm the jurisdiction of a foreign court designated in the jurisdiction agreement. Therefore, the provisions of Chinese law are generally in line with that of the Convention at this point.

Entitled "Recognition and enforcement", Part VI discusses the third key

provision of the Convention, and the Convention regards the recognition and enforcement of the judgments as a basic obligation for the courts addressed of member states. In Chinese law, a foreign judgment can be recognized and enforced by courts addressed of China upon some examination; and these examination and review are limited to the formality of the foreign judgment and review should go without questioning the merits of the foreign court's determination of facts and application of law. Thus, the third key provision of the Convention is similar to the Chinese law.

Entitled "Conclusion", Part VII summarizes the foregoing discussions and then submits that there are no irreconcilable conflicts between Chinese law and the Convention, and China can make some declarations so as to protect the interests of the nation and its people in current judicial system. Actually, the ratification of the Convention can help China to resolve the defects mentioned above by establishing a new international choice of court agreement system.

Key Words:

2005 Hague Convention on Choice of Court Agreement; choice of court; recognition and enforcement of judgments; jurisdiction;