



**Asia-Pacific
Economic Cooperation**

2015/SOM1/EC/037

Agenda Item: 10

**Effective Enforcement of Business Contracts and
Efficient Resolution of Business Disputes Through
the Hague Choice of Court Agreements Convention
– Self-Funded Project**

Purpose: Information
Submitted by: Hong Kong, China



APEC
PHILIPPINES
2 0 1 5

**First Economic Committee Meeting
Clark, Philippines
4-5 February 2015**

APEC Self-Funded Project Proposal

Please submit through APEC Secretariat Program Director.

Project Title:	Effective enforcement of business contracts and efficient resolution of business disputes through the Hague Choice of Court Agreements Convention
Project Number (Assigned by Secretariat):	
Committee / WG / Sub-fora / Task-force:	Economic Committee
Proposing APEC economy:	Hong Kong, China
Co-sponsoring economies:	
Date approved by fora:	
Expected start date:	March 2015
Expected completion date:	February 2016
Project summary: Briefly describe the project. Your summary should include the project topic, planned activities, timing and location:	The purpose of this project is to introduce the Hague Choice of Court Agreements Convention and demonstrate how it may complement APEC's Ease of Doing Business (EoDB) initiative by facilitating enforcement of business contracts and efficient resolution of any business dispute which may also contribute to APEC's regional integration, connectivity and structural reform agenda. The project will be implemented in the form of a capacity-building workshop held in the margins of EC2 meeting in 2015. The workshop's primary resource persons will be experts from the Asia Pacific Regional Office/Permanent Bureau of the Hague Conference on Private International Law as well as officers from APEC economies who have experience with these Hague Conventions. The workshop will cover both operational and institutional aspects. Outcomes of the workshop will be compiled into a report, allowing key lessons learnt to be broadly shared among APEC economies and the international community.
Total cost of proposal (USD):	Fully Self-funded

Project Proponent Information and Declaration:

Name: Ms Michelle Fung; Dr. James Ding

Title: Senior Government Counsel (Ag); Deputy Principal Government Counsel

Organization: Department of Justice, Hong Kong, China

Postal address: 47/F, High Block, Queensway Government Offices, 66 Queensway, Hong Kong, China

Tel: +852 2867 2299; +852 2867 4238 **E-mail:** michellefung@doj.gov.hk; jamesding@doj.gov.hk

As Project Overseer and on behalf of the above said Organization, I declare that this submission was prepared in accordance with the **Guidebook on APEC Projects** and any ensuing project will comply with said Guidebook. Failure to do so may result in the BMC denying or revoking funding and/or project approval. I understand that any funds approved are granted on the basis of the information in the documents' budget table, in the case of any inconsistencies within the document.

Name of Project Proponent

Name of For a Chair/Lead Sheppard

Date: January 2015

Project Synopsis

1. **Relevance – Benefits to region:** What problem does the project seek to address? What is the relevance of the project? Does it have sustained benefits to more than one economy?

On 12 August 2014, an EC Workshop was held in Beijing on Ease of Doing Business through Hague Conventions. The outcome was very successful (see the report at http://www.hcch.net/upload/apec2014workshop_concl.pdf) and the delegates and participants at the Workshop considered, *inter alia*, that the Hague Choice of Court Agreements Convention (“the Convention”) is a “useful global instrument which will benefit the international business community and foster international trade and investment by providing litigants with a simple, predictable and effective legal framework”. On 8 November 2014, APEC Ministers issued a Joint Ministerial Statement welcoming, *inter alia*, the joint efforts of the EC and the Asia Pacific Regional Office of the Hague Conference on Private International Law “to build awareness of private international law instruments to facilitate cross-border trade and investment, enhance ease of doing business, and foster effective enforcement of contracts and efficient settlement of business disputes”. (http://www.apec.org/Meeting-Papers/Ministerial-Statements/Annual/2014/2014_amm.aspx: paragraph 48). On 10 November 2014, APEC Economic Leaders also “recognized the role of internationally recognized private international law instruments such as the Hague Conventions in facilitating cross-border trade and investment, enhancing ease of doing business, and fostering effective enforcement of contracts and efficient settlement of business disputes. We encourage wider use of these instruments which would contribute to APEC’s regional integration, connectivity and structural reform agenda”. (http://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014_aelm.aspx: paragraph 32) The project will therefore build on the achievements from the last workshop, giving due regard to the above statements in the Joint Ministerial Statement and the Leaders’ Declaration. It will also provide capacity building for APEC economies to build awareness of and prepare for the application of the Convention.

The Convention aims at ensuring the effectiveness of choice of court agreements between parties to international commercial transactions. In international business contracts, parties often seek to agree in advance on how disputes arising out of a transaction between them will be resolved and by which court. However, such choice of court agreements are not always respected under divergent domestic rules, particularly when cases are brought before a court other than the one designated by the parties. The Convention will rectify such situation difficulty by promoting greater legal certainty for cross-border business and creating a climate more favourable to international trade and investment. The International Chamber of Commerce therefore advocates large-scale ratification of the Convention which covers international commercial transactions and effectively addresses the need for business to rely on secure cross-border dispute resolution mechanisms. (<http://www.iccwbo.org/News/Articles/2012/ICC-calls-on-governments-to-facilitate-cross-border-litigation/>) Some APEC economies are already actively considering the Convention but there are still many APEC economies which are not familiar with the Convention. The project will introduce the Convention to APEC economies which are not fully aware of the value of the Convention and will provide opportunities for APEC economies which are actively considering the Convention to share their views and challenges.

2. **Objectives:** Describe the 2-3 key objectives of the project. (e.g. ensure workshop participants will be able to...; to create a framework...; to develop recommendations...; to build support...; to revise strategies...; to create an action plan...; to increase knowledge in...; to build capacity in...etc.)

The central objectives of this project are to: (1) enhance understanding of the Convention on how it may provide legal certainty and predictability in relation to the use of choice of court clauses in business to business contracts, thereby facilitating resolution of business disputes among APEC economies; (2) build the specific capacity of APEC economy to consider participation and applying the Convention; and (3) contribute to the development of a network of the relevant APEC officers, with a view to facilitating long-term information and experience sharing.

3. **Alignment– APEC:** Describe specific APEC priorities, goals, strategies, workplans and statements that the project supports, and explain how the project will contribute to their achievement.

APEC Leaders in 2009 endorsed the APEC’s Ease of Doing Business (EoDB) initiative, which establishes the goal of an APEC-wide improvement of 25 percent by 2015 in five key areas of

doing business: (1) starting a business; (2) dealing with permits; (3) getting credit; (4) trading across borders; and (5) enforcing contracts, with an interim target of 5 percent improvement by 2011. This project is particularly relevant to enforcement of contract and will also directly address the recommendation on wider use of the Hague Conventions in the 2014 APEC Economic Leaders' Declaration, which would contribute to APEC's regional integration, connectivity and structural reform agenda.

Alignment – Forum: Briefly explain how the project is aligned with your forum's workplan / strategic plan.

The project seeks to advance structural reform and ease of doing business in APEC, which are the current work of the Economic Committee.

4. **Methodology: How do you plan to implement the project? In this section, briefly address the following:**

- **Workplan:** Project timelines, dates of key activities and deliverable outputs.
- **Beneficiaries:** The proposed selection criteria for participants, beneficiary profiles (e.g. workshop participants, end users, policy makers, researchers/analysts, gender) and how they will be engaged.
- **Evaluation:** Potential indicators developed to measure progress, project outcomes and impacts/successes. Where possible provide indicators which could assess impacts on women.
- **Linkages:** Information on other APEC and non-APEC stakeholders and how they will be engaged. If and how this proposal builds on (but does not duplicate) the work of other projects. How will this activity promote cross fora collaboration?

Workplan. The primary output of this project will be a capacity-building workshop and outcomes report. Project proponent can informally begin considering potential candidates for inclusion in the workshop as soon as the concept note is endorsed. Once the full project proposal is approved, the proponent will work with the Asia Pacific Regional Office of the Hague Conference on Private International Law and other interested economies. The Asia Pacific Regional Office/Permanent Bureau of the Hague Conference has agreed to give full support to the project by providing speakers. APEC economies that are actively considering applying the Hague Convention will also be afforded an opportunity to nominate potential contributors to the workshop. The development of a workshop agenda will begin shortly thereafter, also with the input of interested economies. The workshop will be targeted to take place in the second half of 2015, with the exact date to be determined on the basis of speaker availability and schedules, and with consideration to other events on the APEC calendar. A report of workshop outcomes will be finalized soon after the workshop's conclusion, and will be presented to the Economic Committee during or before the EC meeting in 2016.

Beneficiaries. The primary beneficiaries from this project will be officers from APEC economies, who are involved in litigation management and resolution of business disputes. Member economies will be engaged at all stages of the project's implementation – from the identification of potential speakers and workshop contributors to development of the workshop agenda to discussion of workshop outcomes. The project also stands to be of considerable indirect benefit to the APEC business and civil community, whose engagement in cross-border resolution of business disputes is likely to be facilitated by the application of the Hague Convention.

Evaluation. Evaluation will be based on the quality and usefulness of the workshop, assessed by means of an evaluation form to be filled by the workshop participants, the feedback and comments by APEC economies at EC meetings (throughout the whole project), the reference made to conclusions and recommendations of the workshop in other fora, the number of downloads of presentation materials or conclusions and recommendations of the workshop (if feasible), and the views shared by APEC economies which are actively considering the Convention. Success would be reflected by the raised capacity building of interested economies, as well as increased knowledge of, heightened interest in, and joining of the Convention or improving their current regime in light of the Convention. A report of workshop outcomes will be finalized soon after the workshop's conclusion, and will be presented to the Economic Committee during or before the EC meeting in 2016.

Linkages: The workshop is a capacity-building initiative aimed mainly at member economy officials. The workshop outcomes will be presented to the Economic Committee by a written

report during or before the first EC meeting in 2016. At the same time, the workshop's report (including summaries of the proceedings, presentations, and related materials) will be made available to members in electronic format, to enable easy and widespread distribution within their economies. The results of the project will also be communicated to Committee on Trade and Investment with subject area expertise in cross-border movement of goods and services. Finally, to the extent the project also draws on resources and participation of non-APEC bodies (such as the Hague Conference on Private International Law), the project's outcomes will also be communicated within the broader international community.

This will be the third APEC project to focus on building the capacity of APEC economies with respect to a Hague Convention. On 27 June 2013, an EC Workshop was held in Medan on Simplified Authentication for Production of Foreign Public Documents through the Use of the Hague Apostille Convention and on 12 August 2014, an EC Workshop was held in Beijing on Ease of Doing Business through Hague Conventions. The value of the Hague Conventions facilitating cross-border trade and investment, enhancing ease of doing business, and fostering effective enforcement of contracts and efficient settlement of business disputes has been endorsed by the APEC Economic Leaders in 2014. The project will build upon the achievements from the previous workshops and will also put into effect the recommendation for wider use of the Hague Conventions.