# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>13</td>
</tr>
<tr>
<td>Summarized Recommendations</td>
<td>21</td>
</tr>
<tr>
<td>Abbreviations</td>
<td>27</td>
</tr>
<tr>
<td>Latin and Terms in Other Languages</td>
<td>31</td>
</tr>
<tr>
<td><strong>PART 01</strong> Introduction</td>
<td></td>
</tr>
<tr>
<td>I. Rationale</td>
<td>33</td>
</tr>
<tr>
<td>II. Purpose and Objectives of Guide</td>
<td>35</td>
</tr>
<tr>
<td><strong>PART 02</strong> Contextual Background</td>
<td></td>
</tr>
<tr>
<td>I. Introduction</td>
<td>39</td>
</tr>
<tr>
<td>II. Private International Law: Conflict of Laws vs. Uniform Law</td>
<td>39</td>
</tr>
<tr>
<td>III. Historical Efforts to Codify Conflict of Laws in International Commercial Contracts</td>
<td>40</td>
</tr>
<tr>
<td>A. Montevideo Treaties</td>
<td></td>
</tr>
<tr>
<td>B. Bustamante Code</td>
<td></td>
</tr>
<tr>
<td>C. Rome Convention and Rome I</td>
<td></td>
</tr>
<tr>
<td>IV. Mexico Convention</td>
<td>43</td>
</tr>
<tr>
<td>V. Hague Principles</td>
<td>46</td>
</tr>
<tr>
<td>VI. Recent Legislation in the Americas</td>
<td>49</td>
</tr>
<tr>
<td>on Conflict of Laws in International Commercial Contracts</td>
<td></td>
</tr>
</tbody>
</table>
**PART 03**

**Advances in the Uniform Law Method in Recent Decades**

I. New Scenario in Favor of the Uniform Law Method

II. Tools Used to Achieve Unification and Harmonization

III. Relevant Global Instruments of Uniform Law for International Commercial Contracts

   A. UN Convention on Contracts for the International Sale of Goods
   B. UNIDROIT Principles of International Commercial Contracts
   C. Unification of Contract Law within the Process of Regional Integration
   D. Private Sector Harmonization Initiatives
   E. Arbitral Texts and Law Applicable to International Commercial Contracts

**PART 04**

**Uniform Interpretation**

I. Conflict of Laws and Uniform Texts

II. Domestic Laws
PART 05

Scope of Application of Guide

I. Applicable Law
II. “Contract” in Comparative Law
III. International “Commercial” Contract
IV. “International” Commercial Contract
   A. Background
   B. Mexico Convention
      1. “Habitual Residence”
      2. “Establishment”
      3. “Objective Ties / Closest Connections”
   C. Hague Principles
   D. Relevance of Parties’ Choice to Internationality
   E. Internationality in Domestic Laws
   F. Internationality in Commercial Arbitration
   G. Trend in Favor of a Broad Interpretation of Internationality

V. Exclusions
   A. Capacity
   B. Family Relationships and Succession
   C. Securities and Stocks
   D. Arbitration and Forum-Selection Agreements
   E. Questions of Company Law
   F. Insolvency
   G. Proprietary Effects
   H. Agency
Non-State Law in International Commercial Contracts

I. The Terms “Non-State Law” and “Rules of Law”

II. Types of Non-State Law
   A. Customs, Usages and Practices
   B. Principles
   C. Lex Mercatoria

III. Non-State Law in the Mexico Convention and the Hague Principles
   A. Background – the Rome Convention
   B. Mexico Convention
   C. Hague Principles
      1. Terminology
      2. Criteria to Determine the Legitimacy of Non-State Law
         a. Neutral and Balanced Set of Rules
         b. Generally Accepted Set of Rules
      3. Choice of Non-State Law and Gap-Filling

IV. Non-State Law in Domestic Laws

V. Non-State Law in Arbitration
PART 07

Party Autonomy in Choice of Law Applicable to International Commercial Contracts

I. General Considerations
II. Evolution of the Principle of Party Autonomy
III. Party Autonomy in the Mexico Convention and the Hague Principles
   A. Main Contract, Choice of Law and Choice of Forum
   B. Choice of Non-State Law
   C. The Hague Principles as a Tool for Interpreting the Mexico Convention in Choice of Non-State Law
IV. Party Autonomy in Domestic Laws
V. Party Autonomy in Arbitration

PART 08

Choice of Law: Express or Tacit

I. Express Choice of Law
II. Tacit Choice of Law
   A. Formulas in Comparative Law
   B. Tacit Choice in the Mexico Convention
   C. Tacit Choice in the Hague Principles
III. Forum Selection and Tacit Choice of Law
IV. Tacit Choice of Law and Domestic Laws
V. Arbitration and Tacit Choice of Law
PART 09

Formal Validity of Choice of Law

PART 10

Law Applicable to the Choice of Law Agreement
I. The Problem
II. Alternative Solutions
III. The “Battle of Forms” Problem
IV. Under Domestic Laws

PART 11

Severability of the Choice of Law Clause

PART 12

Other Choice of Law Problems in International Commercial Contracts
I. Modification of the Choice of Law
II. Connection of the Chosen Law to the Contract
III. Renvoi
IV. Assignment of Receivables
Absence of Choice of Law by the Parties

I. The Problem

II. Solutions of the Montevideo Treaties and the Bustamante Code

III. Approach in Europe and the United States

IV. Absence of Choice in the Mexico Convention

A. Principle of Proximity
B. Objective and Subjective Elements
C. Principles of International Bodies

V. Absence of Choice in the Hague Principles

VI. Absence of Choice in Domestic Laws

VII. Absence of Choice in Arbitration

A. Texts of the Conventions
B. UNCITRAL Model Law
C. Approaches for Applying Conflict of Laws Rules
   1. Conflict of Laws Rules of the Place of Arbitration
   2. Conflict of Laws Rules of Another Jurisdiction
   3. Cumulative Application of the Conflict Rules of All States with a Connection
D. Application of General Principles or Non-State Law
E. Use of Voie Directe
PART 14

Dépeçage or “Splitting” of the Law

I. Meaning of Dépeçage 179
II. Dépeçage in the Mexico Convention and the Hague Principles 181
III. Dépeçage and Domestic Laws 182
IV. Dépeçage and Arbitration 183

PART 15

Flexible Interpretation in International Commercial Contracts

I. Rationale 187
II. Authority for Flexible Interpretations in International Transactions 189
III. Flexibility when Applying “Customs” or “Usages” 190
IV. Flexibility when Applying “Principles” 190
V. Pioneering Role of the OAS in Favor of Flexibility 191
VI. Flexible Formula of the Mexico Convention 191
VII. Flexible Formula in Domestic Laws 192
VIII. Flexible Formula in Arbitration 193

PART 16

Scope of the Applicable Law

I. Overview 199
II. Specific Aspects 200

A. Interpretation
B. Rights and Obligations of the Parties
C. Performance and Consequences of Breach
D. Satisfaction of Contractual Obligations
E. Consequences of Nullity or Invalidity
F. Registration of Contracts
G. Other Aspects
PART 17

Public Policy

I. The Concept of Public Policy (Ordre Public)
II. Overriding Mandatory Rules (Lois de Police)
   A. Interpretation
   B. Mandatory Rules in the Mexico Convention, Hague Principles and Rome I
   C. Application of Mandatory Rules of a Foreign State
III. Manifest Incompatibility
   A. Interpretation
   B. Manifest Incompatibility in the Mexico Convention and The Hague Principles
IV. Public Policy at a Regional Level
V. Mandatory Rules and Public Policy in Domestic Laws
VI. Public Policy and Arbitration

PART 18

Other Provisions

I. Prevalence of Other International Agreements
II. States with More Than One Legal System or Different Territorial Units
   A. International Conventions
   B. Domestic Laws

APPENDICES

Appendix A. Mexico Convention and the Hague Principles: Comparative Table
Appendix B. Mexico Convention: Reconciliation between Spanish, English and French Texts
Appendix C. Table of Legislation
Appendix D. Table of Cases
Appendix E. Databases and Electronic Sources