

Comparative Table on Grounds of Jurisdiction

Prepared by the Permanent Bureau

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This table contains a compilation of materials on direct and indirect grounds of jurisdiction received so far from the jurisdictions represented in the Working Group. The purpose of this table is to provide examples of current laws in force, which the Permanent Bureau hopes will feed the discussion on the possible approaches to the criteria for the recognition and enforcement of judgments in the future Convention. The table excludes information on specific multilateral or bilateral treaties that States are a party to. Please send any additional input, clarifications or corrections to the Permanent Bureau (cn@hcch.nl).

Jurisdiction	Direct Grounds of Jurisdiction – Relevant rules	Indirect Grounds of Jurisdiction – Relevant rules
Argentina	<p>Direct grounds of jurisdiction in Argentina are found in the Civil and Commercial Code and other domestic laws that deal with specific subject matter.</p> <p>Argentina adopted a new Civil and Commercial Code on 7 October 2014, which will enter into force on 1 January 2016. The relevant provisions on general direct grounds of international jurisdiction in the new Civil and Commercial Code are as follows.</p> <p><i>Sources of jurisdiction</i> Absent an international treaty, or a forum selection clause, the international jurisdiction of Argentine courts will be governed by the rules of the Code and the applicable special laws (sec. 2601).</p> <p>Moreover, even if the Code does not grant international jurisdiction to Argentine courts, an Argentine court may hear a case, in exceptional circumstances (<i>e.g.</i>, to prevent the denial of justice where the initiation of proceedings abroad would not be reasonable, where the case had sufficient contacts with Argentina, to ensure a right to a fair trial, and that an efficient judgment could be rendered) (sec. 2602).</p> <p><i>Forum selection clause</i> In international disputes involving property, the parties may agree to submit to the jurisdiction of foreign courts or arbitral tribunals, except where Argentine courts have exclusive jurisdiction or where the forum selection is prohibited by law. (sec. 2605)</p> <p><i>The defendant's domicile or habitual residence</i> Absent a specific provision, personal actions must be brought under the jurisdiction of the court located where the defendant is domiciled or has his/her habitual residence. (sec. 2608)</p>	<p>Section 517 of the Argentine National Code of Civil and Commercial Procedure establishes that foreign judgments will be recognised and enforced in Argentina if they have been rendered by a court which had international jurisdiction according to Argentine law (see full section below).</p> <p>Pursuant to Sec. 517, in the absence of a treaty a foreign judgment shall be enforceable if the following requirements are satisfied:</p> <ol style="list-style-type: none">1) the judgment must have <i>res judicata</i> in the State in which it was rendered, it must have been handed down by a court having jurisdiction over the case in accordance with the Argentine rules of international jurisdiction, and must have been rendered as a consequence of an action <i>in personam</i> or an action <i>in rem</i> over movable property, if that property was transferred or taken to Argentina during or after the proceedings in the foreign jurisdiction.2) the defendant against whom the judgment is sought to be enforced must have been summoned in person and his/her right to a defence must have been observed.3) the judgment must have met all the necessary requirements so as to be considered a judgment in the place where it was rendered, as well as the authenticity requirements set forth in Argentine law.4) the judgment must not affect public policy principles in Argentine law.5) the judgment must not conflict with another judgment rendered before or at the same time by an Argentine court.

Exclusive jurisdiction (sec. 2609)

Without prejudice to the provisions set forth in special laws, Argentine courts have exclusive jurisdiction to hear cases where the action concerns:

- a. real estate located in Argentina;
- b. the validity or nullity of the records at an Argentine Registry; or
- c. the validity or registration of patents, trademarks, designs, and other similar interests subject to deposit or registration, where the deposit or registration has been requested or effected or considered to be effected in Argentina.

Jurisdiction based on contracts (sec. 2650)

Absent a valid forum selection clause, at the plaintiff's choice, the following courts shall have jurisdiction over actions arising out of a contract. The court located in the place where:

- a. the defendant is domiciled or has his/her habitual residence. If there are several defendants, the court located in the place where any one of the defendants is domiciled or has his/her habitual residence;
- b. any of the contractual obligations are to be performed; or
- c. there is an agency, branch or representative office of the defendant, so long as it participated in the negotiation or conclusion of the contract.

Jurisdiction based on torts

Without prejudice to the provisions set forth in the above sections, the following courts have jurisdiction over actions in tort. The court located in the place where the located defendant is domiciled, or event occurred or where direct damages were sustained. (sec. 2656)

Jurisdiction based on securities

The courts of the State where the obligation is to be performed or where the defendant is domiciled, at the plaintiff's choice, shall have jurisdiction to hear cases concerning securities.

In cases concerning cheques, the courts located in the place where the drawing bank is domiciled or where the defendant is domiciled shall have jurisdiction.

Jurisdiction based on actions concerning real estate

The courts located in the place where the real estate is situated shall have jurisdiction over actions concerning such property. (sec. 2664)

Jurisdiction based on actions concerning property subject to registration

	<p>The courts located in the place where the property was registered shall have jurisdiction over actions concerning such property. (sec. 2665)</p> <p><i>Jurisdiction based on actions concerning property which is not subject to registration</i></p> <p>The courts located in the place where the defendant is domiciled or where the property is situated shall have jurisdiction over actions concerning such property. (sec. 2666)</p>	
<p>Australia¹</p>	<p>Each state and territory as well as the Federal Court have specific rules which govern service in and outside of Australia.</p> <p>Australian jurisdictions differ with regard to:</p> <ul style="list-style-type: none"> • the grounds for granting or permitting service of process outside Australia; • whether a court’s leave to serve is required; and • the information that must be provided to the party served.² <p>While all Australian jurisdictions recognise certain categories of proceedings where service abroad is permitted (such as proceedings pertaining to a contract made or broken within an Australian jurisdiction), there is considerable difference with regard to whether or not these categories must be interpreted “independently and disjunctively.” In other words, jurisdictions differ as to whether all aspects of a given claim must fall under an accepted category in order for the Australian court to have jurisdiction, or whether it is sufficient for one of the claimant’s causes of action to fall within an accepted category.³</p> <p>Generally speaking, Australian courts have jurisdiction where:</p> <ul style="list-style-type: none"> • the defendant voluntarily submits to the jurisdiction of the Australian court; 	<p>Australian courts recognise and enforce foreign judgments either under common law or under a statutory regime, the Foreign Judgments Act 1991 (Cth). Under the common law, there are two grounds of indirect jurisdiction upon which an Australian court will recognise and enforce a foreign judgment. These are when⁴ –</p> <ol style="list-style-type: none"> 1) The judgment debtor was either a resident of the foreign jurisdiction or was present in the jurisdiction at the time of commencement of the proceedings before the court of origin. This rule mirrors the service of process rules which are required for Australian courts to assume jurisdiction over foreign defendants. <ol style="list-style-type: none"> a. Natural persons – the judgment debtor must be personally present in the jurisdiction. b. Legal persons – in the context of corporations the term “presence” denotes a sufficient territorial connection rather than the corporation being physically located in the forum. The corporation must have carried on business in the foreign country for some period of time at a fixed place. 2) The judgment debtor submitted to the jurisdiction of the foreign court. Submission can be by agreement or by voluntarily participating in the court proceedings without contesting the jurisdiction of the foreign court.⁵

¹ Answer obtained from Australia’s response to the HCCH questionnaire completed in preparation for the *International Litigation in the Asia Pacific Conference*, Wuhan, People’s Republic of China. Available on the Hague Conference website at http://www.hcch.net/index_en.php?act=publications.details&pid=6001&dtid=55

² Presently, only Western Australia and the Federal Court require the court’s leave to serve.

³ Western Australia, Victoria, South Australia and Northern Territory require all aspects of a claim to fall under an accepted category prior to exercising jurisdiction.

⁴ S. Harder, “Recognition and Enforcement of Foreign Judgments in Australia”, *Yearbook of Private International Law* (Vol 15, 2013/14), 258-262. There is also some authority to suggest that a third category exists. Some Australian courts have held that a foreign court has competent jurisdiction if the judgment debtor is a citizen of the foreign country that rendered the judgment. See, *Federal Finance and Mortgage td v Winternitz*, NSWSC, Sully J., 9 November 1989; *Independent Trustee Services Ltd v Morris* [2010] NSWSC 1218, (2010) 79 SWLR 425 a [20]-[28], [35].

⁵ It should be noted that merely participating in the proceedings to “protect, or obtain the release of, property seized, to contest the jurisdiction of the court, or to invite the court in its discretion not to exercise jurisdiction”, does not amount to voluntary submission. S. Harder, above n 4, 261-262.

	<ul style="list-style-type: none"> • the defendant is domiciled or resides in Australia; • the defendant carries out regular commercial activity in Australia; • the contract is performed, or there is a breach of contract, in Australia, wherever the contract is made; • the subject matter of the proceedings is a contract and the contract is made in the state on behalf of the person that is to be served by or through an agent carrying out business or residing in the state; • the contract is governed by the law of the state; • the proceedings are founded on a tort committed in the state; • the proceedings, wholly or partly, are founded on or are for the recovery of damages in respect of damage suffered in the state caused by a tortious act or omission, wherever it occurred; • the proceedings are for contribution or indemnity in respect of a liability enforceable by proceedings in a court; or • the parties to the dispute have designated the courts of Australia for the purpose of deciding disputes between them.⁶ <p>The expansive grounds of jurisdiction in Australia are measured by the “clearly inappropriate forum test”, as set out by the High Court of Australia in the case of <i>Voth v Manildra Flour Mills Pty Ltd</i>⁷ (also known as the <i>Voth</i> test) . In Australia, an application is made for a stay of local proceedings and the onus of proving that the court is the “clearly inappropriate forum” rests on the party seeking a stay or to set aside service (usually the defendant). However, an exception to the burden of proof exists where the plaintiff was required to obtain prior leave to serve the defendant outside the jurisdiction. In such cases the onus lies with the plaintiff. In considering an application for a stay of proceedings or to set aside service, the court will have regard to:</p> <p>(a) “Any significant connection between the selected forum and the subject matter of the action and/ or the parties, such as the domiciles of the parties, their places of business and the place where the relevant transaction occurred or where the subject matter of the suit is situated, and other factors affecting convenience or expense, such as the availability of witnesses.</p>	<p>In the past, Australian courts have explored possible other bases, including reciprocity/comity, nationality and domicile, but those have not found acceptance under Australian common law.⁸</p> <p>Recognition and enforcement under the Foreign Judgments Act 1991 (Cth) (FJA)⁹ is by way of registration. This streamlined process is based on reciprocal arrangements between Australian and foreign courts. The foreign courts are scheduled in the Foreign Judgments Regulations 1992. The FJA, too, requires an inquiry into the jurisdiction of the foreign adjudicating court. Under section 7 of the FJA, a court must not register a foreign judgment if it determines that the court that rendered the foreign judgment did not have jurisdiction to hear the case. Foreign courts are deemed to have had jurisdiction where:</p> <ul style="list-style-type: none"> • For actions in <i>personam</i> where the judgment debtor: <ul style="list-style-type: none"> ○ voluntarily submitted to the jurisdiction of the foreign court; <ul style="list-style-type: none"> ▪ the following circumstances do not alone amount to voluntary submission: <ul style="list-style-type: none"> • entering an appearance; • participating in a proceeding merely to protect, or obtain the release of property seized, or threatened with seizure, or property subject to an order restraining its disposition or disposal; or • appearing in order to contest the jurisdiction of the foreign court or in order to invite the court in its discretion not to exercise its jurisdiction in the proceedings. ○ was the plaintiff or counter-claimed in the foreign proceedings; ○ was a defendant in the foreign proceedings and agreed to the jurisdiction of that court or courts of that country; ○ was a defendant in the foreign proceedings and, at the time of commencement of the proceedings, resided in or had its principal place of business in that country; or
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⁶ There are other grounds for service out of Australia which vary between the civil procedure rules of the states and territories and the Federal Court.

⁷ (1990) 171 CLR 538; 97 ALR 124.

⁸ M. Davies, A.S. Bell, P.L.G. Brereton, *Nygh’s Conflict of Laws in Australia*, (8th ed, 2010, LexisNexis Australia), p. 808, 815 – 817.

⁹ Foreign Judgments Act 1991 (Cth), available at <http://www.comlaw.gov.au/Details/C2010C00317/Download>

	<p>(b) Any legitimate and substantial juridical advantage to the plaintiff, such as greater recovery, more favourable limitation period, better ancillary procedures, or assets within the jurisdiction against which any judgment can be enforced.</p> <p>(c) Whether the law of the forum will supply the substantive law to be applied in the resolution of the subject case or whether the matter is governed by foreign law.”¹⁰</p> <p><i>Parallel proceedings and related proceedings</i></p> <p>The <i>Voth</i> test also applies to applications for a stay of proceedings on the basis that litigation is pending between the same parties on the same subject matter in another jurisdiction. In such circumstances, the court will have regard to the order in which proceedings were brought before the Australian court and the foreign court and by whom they were brought, however those two factors alone are not to be considered as conclusive factors in an application for a stay. The court will also have regard to the “recognition of the eventual foreign judgment, the connection between the parties and the subject matter of the litigation with the jurisdiction in question, and equality of access to justice in competing jurisdictions.”¹¹</p> <p>By contrast, for related proceedings the court is not to apply the clearly inappropriate forum test by having regard only to the case brought before it, rather the court is to consider whether the Australian proceedings are “productive of serious and unjustified trouble and harassment or seriously and unfairly burdensome, prejudicial or damaging”, having regard to all proceedings arising out of the ‘same sub-stratum of fact,’ both in Australia and abroad.¹²</p>	<ul style="list-style-type: none"> ○ was a defendant in the foreign proceedings and the matter adjudicated was in respect of a transaction effected through an office or place of business in that country. ● For actions with respect to immovable property or actions <i>in rem</i> of which the subject matter is movable property – if the property in question was, at the time of the proceedings, located in the country of that foreign court; or ● If the jurisdiction of the foreign court is recognised by the law in force in the Australian State or Territory in which recognition or enforcement is being sought. <p>Foreign courts are deemed not to have had jurisdiction if: ¹³</p> <ul style="list-style-type: none"> ● the subject matter of the proceedings was immovable property situated outside the country of the foreign court that rendered the judgment; ● the bringing of the proceedings in the foreign court was contrary to an agreement between the parties stipulating the courts of another country; or ● the defendant in the foreign proceedings was entitled to immunity from the jurisdiction of the court that rendered the judgment and did not submit to that jurisdiction.
Belarus		
Brazil	<p>Direct grounds of jurisdiction in Brazil are generally contained in the Civil Procedure Code of Brazil.</p> <p>Art. 88 of the Code provides that Brazilian courts have jurisdiction to hear cases where:</p> <ul style="list-style-type: none"> ● the defendant, whatever his/her nationality, is domiciled in Brazil (note: a foreign legal person with an agency, branch, or subsidiary in Brazil will be considered to be domiciled in Brazil); 	<p>Brazilian law does not provide for any kind of indirect ground of jurisdiction for the purpose of recognition and enforcement of foreign judgments. Some international instruments to which Brazil is a contracting State provide for indirect grounds of jurisdiction, but they apply only to the recognition and enforcement of judgments rendered by the contracting States to that international instrument.</p>

¹⁰ M. Davies, A.S. Bell, P.L.G. Brereton, above n 8, p. 170.

¹¹ Ibid, p.179.

¹² However, it should be noted that the *Voth* test is not applicable in applications for a temporary stay of proceedings pending the determination of proceedings abroad. For such applications the court is to have regard to the following criteria set out in *Sterling Pharmaceuticals Pty Ltd v Boots & Co (Aust) Pty Ltd* (1992) 34 FCR 287 at 294 per Lockhart J and was adopted by the High Court of Australia in *Henry v Henry* (1996) 185 CLR 571 at 590 and is set out in M. Davies, A.S. Bell, P.L.G. Brereton, above n 8, p.182.

¹³ Section 7(4) of the *Foreign Judgments Act 1991* (Cth).

	<ul style="list-style-type: none"> • an obligation (including contractual obligations) is to be fulfilled in Brazil; or • the claim arises from an event or act that occurred in Brazil. <p>Brazilian courts also have jurisdiction to hear cases concerning liability for air transportation if Brazil is the place of destination (article 10, I, Law 7.565/1986).</p> <p>These provisions describe situations of “concurrent jurisdiction”, which means that Brazilian judges have jurisdiction to hear those cases, but also that Brazilian courts will accept a foreign judgment that falls within these situations, if it is presented for enforcement before the Brazilian judgment is final.</p> <p>Art. 89 of the Code provides that Brazilian courts have exclusive jurisdiction over:</p> <ul style="list-style-type: none"> • actions related to real property located in Brazil; or • proceedings involving the division of property of a deceased individual, so long as the property is located within Brazil. It does not matter if the deceased person was a foreigner or resided outside Brazil. <p>Brazilian courts also have exclusive jurisdiction over bankruptcy, judicial and out-of-court recovery procedures related to companies with their principal headquarters in Brazil or to the Brazilian branch, agency or other establishment of a company that has its headquarters abroad (Art. 3, Law 11.101/2005).</p> <p>Some international instruments to which Brazil is a contracting State provide for other grounds of direct jurisdiction, but they only apply to cases relating to contractual or non-contractual obligations to which a person domiciled in those contracting States is a party.</p>	<p>It is also worth noting, however, that the Brazilian law (Law-Decree nº 4.657/1942, Art. 15, a; Resolution nº 09/2005, Art. 5, I, of the Superior Court of Justice) provides that a foreign judgment must have been rendered by a “competent authority”, in order to be recognised and enforced in Brazil. When interpreting such condition, the case law and legal doctrine indicate that the authority who rendered the judgment has to have assumed jurisdiction</p> <ol style="list-style-type: none"> a) according to the direct grounds of jurisdiction provided for by the law of the State of origin; and b) in a situation that does not fall within the direct grounds of exclusive jurisdiction of Brazil, according to Brazilian law.
<p>Canada</p>	<p><i>Uniform Law</i></p> <p>The Uniform Law Conference of Canada has proposed a uniform law on jurisdiction. This uniform law removes the reliance on service of the writ and replaces it with the real and substantial connection test. It was drafted to bring the Canadian jurisdictional rules in line with the principles laid down by the Supreme Court of Canada in <i>Morguard Investments Ltd. v. De</i></p>	<p>The most pertinent case on indirect grounds of jurisdiction in Canada is <i>Morguard Investments Ltd. V. DeSavoye</i>¹⁶. In that case, the Canadian Supreme Court established a principle of comity, noting that Canadian provincial courts should enforce “foreign judgments” (originally intended to mean judgments from other provinces), as long as the court issuing the judgment had 1) legitimately exercised its jurisdiction, and 2) reached its judgment via fair</p>

¹⁶ [1990] 3 SCR 1077.

	<p><i>Savoie</i>¹⁴. This uniform law is called the Court Jurisdiction and Proceedings Transfer Act (1994)¹⁵ and the relevant provisions are as follows -</p> <p>Art. 3 provides that “[a] court has territorial competence in a proceeding that is brought against a person only if -</p> <p>(a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,</p> <p>(b) during the course of the proceeding that person submits to the court's jurisdiction,</p> <p>(c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,</p> <p>(d) that person is ordinarily resident in [enacting province or territory] at the time of the commencement of the proceeding, or</p> <p>(e) there is a real and substantial connection between [enacting province or territory] and the facts on which the proceeding against that person is based.”</p> <p>Art. 10 provides that “[w]ithout limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between [enacting province or territory] and the facts on which a proceeding is based, a real and substantial connection between [enacting province or territory] and those facts is presumed to exist if the proceeding –</p> <p>(a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in immovable or movable property in [enacting province or territory],</p>	<p>process. The test for legitimate exercise of jurisdiction is a “real and substantial connection” between the jurisdiction and the defendant or subject matter of the case. A real and substantial connection can be indicated by (among other factors):</p> <ul style="list-style-type: none"> ▪ “Any nexus between the subject matter and the territory in which the action is brought”; or ▪ “Any connection between the damages suffered and the jurisdiction in which the action is brought.” <p>The real and substantial connection test was extended to the recognition and enforcement of foreign judgments arising out of international cases in the case of <i>Beals v Saldanha</i>.¹⁷</p> <p>Since the development of the test the Uniform Law Conference of Canada has proposed a uniform law on the recognition and enforcement of foreign judgments incorporating the real and substantial connection test. The legislation is called the Uniform Enforcement of Foreign Judgments Act (2003)¹⁸ and the relevant provisions are as follows -</p> <p>Art 8. “A court in the State of origin has jurisdiction in a civil proceeding that is brought against a person if</p> <p>(a) the person expressly agreed to submit to the jurisdiction of the court;</p> <p>(b) as defendant, the person submitted to the jurisdiction of the court by appearing voluntarily;</p> <p>(c) the person commenced a counterclaim to the proceeding; the State of origin;</p>
	<p>(b) concerns the administration of the estate of a deceased person in relation to</p> <p>(i) immovable property of the deceased person in [enacting province or territory], or</p> <p>(ii) movable property anywhere of the deceased person if at the time of death he or she was ordinarily resident in [enacting province or territory],</p>	<p>(d) the person, being a natural person, was ordinarily resident in</p> <p>(e) the person, not being a natural person, was incorporated in the State of origin, exercised its central management in that State or had its principal place of business located in that State; or</p> <p>(f) there was a real and substantial connection between the State of origin and the facts on which the proceeding was based.”</p>

¹⁴ [1990] 3 S.C.R. 1077.

¹⁵ Available on the Uniform Law Conference website at <http://ulcc.ca/en/home-en-gb-1/183-josetta-1-en-gb/uniform-actsa/court-jurisdiction-and-proceedings-transfer-act/1092-court-jurisdiction-proceedings-transfer-act?showall=&limitstart=>

¹⁷ 2003 SCC 72.

¹⁸ Available on the Uniform Law Conference website at <http://ulcc.ca/en/home-en-gb-1/353-josetta-1-en-gb/uniform-actsa/enforcement-of-foreign-judgments-act/662-enforcement-of-foreign-judgments-act>. The Act has been incorporated in Saskatchewan and was already incorporated in Quebec. See the status table on the Uniform Law Conference website available at <http://www.ulcc.ca/en/uniform-acts-new-order/general-information-status>.

	<p>(c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to</p> <ul style="list-style-type: none"> (i) immovable or movable property in [enacting province or territory], or (ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in [enacting province or territory], <p>(d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:</p> <ul style="list-style-type: none"> (i) the trust assets include immovable or movable property in [enacting province or territory] and the relief claimed is only as to that property; (ii) that trustee is ordinarily resident in [enacting province or territory]; (iii) the administration of the trust is principally carried on in [enacting province or territory]; (iv) by the express terms of a trust document, the trust is governed by the law of [enacting province or territory], <p>(e) concerns contractual obligations, and</p> <ul style="list-style-type: none"> (i) the contractual obligations, to a substantial extent, were to be performed in [enacting province or territory], (ii) by its express terms, the contract is governed by the law of [enacting province or territory], or (iii) the contract <ul style="list-style-type: none"> (A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and (B) resulted from a solicitation of business in [enacting province or territory] by or on behalf of the seller, <p>(f) concerns restitutionary obligations that, to a substantial extent, arose in [enacting province or territory],</p> <p>(g) concerns a tort committed in [enacting province or territory],</p> <p>(h) concerns a business carried on in [enacting province or territory], or</p> <p>(i) is a claim for an injunction ordering a party to do or refrain from doing anything:</p> <ul style="list-style-type: none"> (i) in [enacting province or territory], or 	<p>Art 9. "For the purposes of paragraph 8(f), in the case of a foreign judgment allowed by default, a real and substantial connection between the State of origin and the facts on which the civil proceeding was based is established in, but is not limited to, the following cases:</p> <ul style="list-style-type: none"> (a) the judgment debtor, being a defendant in the court of the State of origin, had an office or place of business in that State and the proceedings were in respect of a transaction effected through or at that office or place; (b) in an action for damages in tort or for extra-contractual damages <ul style="list-style-type: none"> (i) the wrongful act occurred in the State of origin, or (ii) injury to person or property was sustained in the State of origin, provided that the defendant could have reasonably foreseen that the activity on which the action was based could result in such injury in the State of origin, including as a result of distribution through commercial channels known by the defendant to extend to that State; (c) the claim was related to a dispute concerning title in an immovable property located in the State of origin; (d) in an action for damages in contract, the contractual obligation was or should have been performed in the State of origin; (e) for any question related to the validity or administration of a trust established in the State of origin or to trust assets located in that State, the trustee, settlor or beneficiary had his or her ordinary residence or its principal place of business in the State of origin; or (f) the claim was related to a dispute concerning goods made or services provided by the judgment debtor and the goods and services were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident in the State of origin and were marketed through the normal channels of trade in the State of origin."
	<ul style="list-style-type: none"> (ii) in relation to immovable or movable property in [enacting province or territory], (j) is for a determination of the personal status or capacity of a person who is ordinarily resident in [enacting province of territory], (k) is for enforcement of a judgment of a court made in or outside [enacting province or territory] or an arbitral award made in or outside [enacting province or territory], or 	<p>Commentary suggests that the real and substantial connection test is intended to operate "only in the case of default judgments and in a non-exhaustive</p>

	<p>(l) is for the recovery of taxes or other indebtedness and is brought by the Crown [of the enacting province or territory] or by a local authority [of the enacting province or territory].”</p> <p>The Act has been incorporated in Saskatchewan, British Columbia, Yukon Territory and Nova Scotia.¹⁹</p> <p><i>Ontario</i> The rules with respect to direct grounds of jurisdiction in Ontario are contained in the Ontario Rules of Civil Procedure. Pursuant to rule 17.02 of the Rules of Civil Procedure (Ontario) (RPO 1990), Regulation 194 – “A party to a proceeding may, without a court order be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims, (a) in respect of real or personal property in Ontario; (b) in respect of the administration of the estate of a deceased person, (i) in respect of real property in Ontario, or (ii) in respect of personal property, where the deceased person, at the time of death, was resident in Ontario; (c) for the interpretation, rectification, enforcement or setting aside of a deed, will, contract or other instrument in respect of, (i) real or personal property in Ontario, or (ii) the personal property of a deceased person who, at the time of death, was resident in Ontario; (d) against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property in Ontario; (e) for foreclosure, sale, payment, possession or redemption in respect of a mortgage, charge or lien on real or personal property in Ontario;</p>	<p>fashion so that additional grounds which would be acceptable both in the State of origin and in Canada could be considered by the enforcing court.”²⁰</p>
	<p>(f) in respect of a contract where, (i) the contract was made in Ontario, (ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario, (iii) the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract, or</p>	

¹⁹ See the status table on the Uniform Law Conference website available at <http://www.ulcc.ca/en/uniform-acts-new-order/general-information-status>.

²⁰ See comments to the Uniform Enforcement of Foreign Judgments Act (2003) available at <http://ulcc.ca/en/home-en-gb-1/353-josetta-1-en-gb/uniform-actsa/enforcement-of-foreign-judgments-act/662-enforcement-of-foreign-judgments-act>.

	<p>(iv) a breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario;</p> <p>(g) in respect of a tort committed in Ontario”.</p> <p>In the case of <i>Club Resorts v Van Breda</i>,²¹ the Supreme Court further clarified the “real and substantial connection” test, holding that the inquiry into a real and substantial connection involves 2 steps:²²</p> <p>1) Plaintiff must establish a “presumptive connecting factor” that connects the litigation to the jurisdiction.</p> <p>2) Defendant may then rebut by showing that, on the facts of the particular case, the connection is insufficient.</p> <p>The Court also identified a (non-exhaustive) list of presumptive connecting factors for cases concerning a tort:²³</p> <ul style="list-style-type: none"> ▪ “Defendant is domiciled or resident in the jurisdiction ▪ Defendant carries on business in the jurisdiction. ▪ The tort was committed in the jurisdiction ▪ A contract connected with the dispute was made in the jurisdiction.” <p>The court further explained that: “Although the factors set out in the list are considered presumptive, this does not mean that the list of recognized factors is complete, as it may be reviewed over time and updated by adding new presumptive connecting factors. When a court considers whether a new connecting factor should be given presumptive effect, the values of order, fairness and comity can serve as useful analytical tools for assessing the strength of relationship with a forum to which the factors in question points.”²⁴</p> <p><i>Québec</i> The rules with respect to direct grounds of jurisdiction in Québec are contained in the Québec Civil Code. Art 3148 of the Code provides that -</p>	
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²¹ 2012 SCC 17.

²² *Club Resorts Ltd. v. Van Breda* [2012] 1 R.C.S., 574-575.

²³ *Club Resorts Ltd. v. Van Breda* [2012] 1 R.C.S., 574.

²⁴ *Club Resorts Ltd. v. Van Breda* [2012] 1 R.C.S., 575.

	<p>“In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:</p> <ol style="list-style-type: none"> (1) the defendant has his domicile or his residence in Québec; (2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec; (3) a fault was committed in Québec, injury was suffered in Québec, an injurious act occurred in Québec or one of the obligations arising from a contract was to be performed in Québec; (4) the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship; (5) the defendant has submitted to their jurisdiction. <p>However, Québec authorities have no jurisdiction where the parties have chosen by agreement to submit the present or future disputes between themselves relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authorities.”</p> <p>Art 3149 provides that “Québec authorities also have jurisdiction to hear an action based on a consumer contract or a contract of employment if the consumer or worker has his domicile or residence in Québec; the waiver of such jurisdiction by the consumer or worker may not be set up against him.”</p> <p>Art 3150 provides that “Québec authorities also have jurisdiction to hear an action based on a contract of insurance where the holder, the insured or the beneficiary of the contract is domiciled or resident in Québec, the contract covers an insurable interest situated in Québec or the loss took place in Québec.”</p> <p>Art 3151 provides that “Québec authorities have exclusive jurisdiction to hear in first instance all actions based on liability under article 3129.”</p> <p>Art 3129 provides that “[t]he application of the rules of this Code is mandatory with respect to civil liability for any injury suffered in or outside Québec as a result of exposure to or the use of raw materials, whether processed or not, originating in Québec.”</p>	
<p>China (mainland)</p>	<p>The rules on direct grounds of jurisdiction in China are contained in the Civil Procedure Law of the People's Republic of China. Specifically, Chapter 24 deals with international jurisdiction. Pursuant to that chapter Chinese courts will have jurisdiction where:</p>	<p>In Chinese Civil Procedure Law, articles 281 and 282 have given the principles to the recognition and enforcement of foreign judgments in China.</p>

	<ul style="list-style-type: none"> • the defendant voluntarily submits to the jurisdiction; • the defendant carries out regular activity in China; • the contract is performed or there is a breach of contract in China; • a contract is concluded or executed between parties in China; • an injury occurs to a person as a result of a tortious act in China; • damage occurs to tangible property as the result of a tortious act occurring in China; or • the defendant does not reside in China, but the defendant's immovable property is held in China. <p>The nature of the above grounds is such that without one of the grounds present a court will not be entitled to hear the case.</p>	
<p>Hong Kong SAR</p>	<p>Hong Kong SAR has no specific rules governing the issues of jurisdiction in international cases. However, the Hong Kong courts will hear cases, subject to the defendant being served properly, where:</p> <ul style="list-style-type: none"> • the defendant voluntarily submits to the jurisdiction; • the defendant is domiciled or resides in Hong Kong; • the defendant carries out regular commercial activity in Hong Kong; • the contract is performed or there is a breach of contract in Hong Kong; • the defendant carries out regular commercial activity in Hong Kong; • the contract is performed or there is a breach of contract in Hong Kong; • a contract is concluded or executed between parties in Hong Kong; • the parties to the dispute have designated the courts of Hong Kong for the purpose of deciding disputes between them; • an injury occurs to a person as the result of a tortious act occurring in Hong Kong; • damage occurs to tangible property as the result of a tortious act occurring in Hong Kong; or • the defendant does not reside in Hong Kong, but the defendant's immovable property is held there. 	<p>There is a statutory registration scheme in Hong Kong for foreign judgments under the Foreign Judgments (Reciprocal Enforcement) Ordinance, Chapter 319 of the Laws of Hong Kong ("Cap 319"). The Ordinance facilitates the recognition and enforcement of judgments on the basis of reciprocity.</p> <p>A judgment creditor, with a judgment from a jurisdiction designated under Cap 319 may apply to the Court of First Instance, <i>ex parte</i>, for registration of the judgment provided that the relevant requirements as set out in Cap 319 are met. Section 6 of Cap 319 sets out the cases in which registered judgments may be set aside and, among other standard grounds for refusal, provides that judgments may be set aside if:</p> <ul style="list-style-type: none"> • the courts of the country of the original court had no jurisdiction in the circumstances of the case; or • the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that the process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear. <p>Foreign judgments that may not be registered under Cap 319, may be enforced under common law. At common law the judgment creditor must bring fresh proceedings in Hong Kong in order to enforce the judgment. In determining whether or not to enforce the judgment, the court will have regard to whether the foreign court had jurisdiction over the defendant according to the Hong Kong rules (<i>i.e.</i>, that the defendant was present in the foreign jurisdiction at the relevant time when proceedings were brought, or consented to the foreign court having jurisdiction either by appearing to contest to the claim or by prior relevant agreement).</p>

Macao SAR

The provisions on jurisdiction in international litigation in the Macao SAR are contained in Arts. 15 to 20 of the Civil Procedure Code of Macao (CPC). The courts of Macao will have jurisdiction where:

- the defendant voluntarily submits to the jurisdiction;
- the defendant is domiciled or resides in the Macao SAR;
 - This is a subsidiary criteria that is provided in Art. 17 (a) and (c) of the CPC, respectively, either the defendant is a natural or a legal person.
- the defendant carries out regular commercial activity in the Macao SAR
 - This is also covered by the provisions of Art. 17 (a) and (c) of the CPC. Therefore it also applies if the defendant does not reside in the Macao SAR but carries out regular professional activity and/or has his professional domicile in the Macao SAR, provided that the action refers to relationships resulting from these circumstances.
- the contract is performed or there is a breach of contract in Macao SAR;
 - Under Art. 16 (a) of the CPC the Macao courts have jurisdiction on actions to require compliance with obligations, compensation for non-compliance or defective compliance or termination of the contract for failure to comply, when the obligation should be or should have been fulfilled in Macao.
- the parties to the dispute have designated the courts of Macao SAR for the purpose of deciding disputes between them;
 - According to Art. 29 of the Civil Procedure Code, the parties are free to agree on which court has jurisdiction to settle any dispute that may arise between them, as long as the legal relationship is connected to more than one legal system. The agreement will only be valid if it meets the requirements in Art. 29 (3).
- an injury occurs to a person as the result of a tortious act occurring Macao or where damage occurs to tangible property as the result of a tortious act occurring in Macao;
 - Art. 15 (a) of the CPC provides that the Macao SAR courts have jurisdiction where the act providing the basis for the cause of action, or any belonging to it occurred in Macao.
- the defendant does not reside in Macao, but the defendant's immovable property is held in Macao

Arts. 1199 to 1205 of the Civil Procedure Code provides the special procedure for reviewing and confirming decisions rendered by courts or arbitrators from outside Macao.

In order for a foreign judgment to be confirmed, it is necessary that the following cumulative requirements set out in Art. 1200 (1) of the CPC are met:

- a) there must be no doubts as to the authenticity of the document that contains the decision or as to the intelligibility of the decision;
- b) the decision should have acquired *res judicata* force according to the laws of the foreign jurisdiction;
- c) it must have been rendered by a court whose jurisdiction was not provoked by fraud and does not concern a subject matter within the exclusive jurisdiction of the Macao courts;
- d) the same case is not pending before a court in Macao (*lis pendens*) or has not been tried (*res judicata*) by a Macao court, except if it was first brought before the court from outside Macao (foreign court);
- e) the respondent must have been properly summoned according to the law of the court of origin, and in the proceedings the principles of due process of law and equality of the parties have been observed; and
- f) the matter does not involve a decision whose confirmation leads to a result which is manifestly incompatible with the public order of Macao.

If the aforesaid requisites are fulfilled, the decision on the proceedings will be attributed validity and formal effectiveness, according to the laws in force in Macao.

	<ul style="list-style-type: none"> ○ The Macao SAR courts are considered to have exclusive jurisdiction on actions relating to rights <i>in rem</i> in immovable property located in Macao (see Art. 20 (a) of the CPC). <p>Moreover, Art. 15 (c) of the CPC provides that the Macao courts have jurisdiction where a right cannot become effective except by means of an action commenced before a court in Macao, provided that there is a ponderous element of personal or real connection between the proposed action and Macao.</p>	
Costa Rica	<p>The rules on direct grounds of jurisdiction in international cases in Costa Rica can be found in sections 46-48 of the Costa Rican Code of Civil Procedure.</p> <p>Sec. 46 provides that Costa Rican courts shall have jurisdiction:</p> <ol style="list-style-type: none"> 1) where the defendant is domiciled in Costa Rica, regardless of his/her nationality, 2) where the obligation in dispute is to be performed in Costa Rica, or 3) where the cause of action arises out of an incident or an act which took place in Costa Rica. <p>For the purposes of subsection 1), foreign legal persons shall be presumed to be domiciled in Costa Rica if they have an agency, affiliate or branch in the country. However, the courts will only have jurisdiction over cases arising out of the acts or contracts concluded by such agency, affiliate or branch.</p> <p>Sec. 47 provides that Costa Rican courts shall have exclusive jurisdiction:</p> <ol style="list-style-type: none"> 1) over actions <i>in rem</i> or quasi-in-rem concerning movables and immovables located in Costa Rica. 2) over actions requiring the preparation of inventory and to determine the division of property located in Costa Rica. <p>Sec. 48 provides that suits brought before foreign courts shall not constitute a basis for <i>lis pendens</i>.</p> <p>Sec. 905 has been construed as a ground for direct jurisdiction in succession proceedings in various decisions.</p>	<p>Sec. 705 of the Costa Rican Code of Civil Procedure deals with the validity of foreign judgments and arbitral awards and provides that in order to be valid, foreign judgments, enforceable resolutions and awards must meet the following requirements:</p> <ol style="list-style-type: none"> 1) They must have been duly authenticated. 2) The defendant must have been summoned, assisted by a lawyer, or a default judgment must have been entered against him/her, in accordance with the law of the country of origin. He/she must also have received legal notice of the judgment, enforceable resolution or award. 3) The alleged cause of action must not be a matter that falls within the exclusive jurisdiction of Costa Rican courts. 4) There must be no proceedings pending in Costa Rica, nor judgments by Costa Rican courts that have become <i>res judicata</i>. 5) They must be enforceable in the country of origin. 6) They must not be contrary to public policy.
Cyprus		

<p>Germany</p>	<p>Generally speaking, a German court will have jurisdiction over all actions that may be brought against a person who has his “general venue” in Germany, unless an exclusive venue has been established for court actions.</p> <p>The “general venue” of a person is determined by his domicile (Sec. 12, 13 Code of Civil Procedure). If the person has no domicile, the “general venue” is determined by that person’s place of abode in Germany and, where such place of abode is unknown, by that person’s last domicile (Sec. 16 Code of Civil Procedure). The “general venue” of legal persons is defined by their registered seat. It is admissible to determine a venue by statute or by other special provision (Sec. 17 Code of Civil Procedure).</p> <p>For certain types of claims, the claimant may choose a different jurisdiction from that where the defendant lives (a special but not an exclusive jurisdiction). Examples of these types of claims are as follows:</p> <ul style="list-style-type: none"> • Disputes arising from a contractual relationship and disputes about the existence of a contract may also be commenced in the court of the place where the disputed obligation is to be performed (Sec. 29 Code of Civil Procedure). An agreement regarding the place of performance is relevant for procedural purposes only if the contracting parties belong to the category of people who are authorised to conclude choice-of-jurisdiction agreements under Sec. 38 (1) Code of Civil Procedure (see below). • In civil liability claims for wrongful acts, the court in the area where the act took place will have jurisdiction (Sec. 32 Code of Civil Procedure). • Claims brought in relation to succession, claims of the heir against a possessor of an inheritance, claims under testamentary gifts or under other testamentary trusts, claims to the compulsory portion of the inheritance, or complaints brought regarding the distribution of the inheritance may be brought in the court where the testator had his “general venue” at the time of his death. If the testator is a German citizen who had no “general venue” in Germany at the time of his death, these claims may be brought in the jurisdiction of the testator’s last domicile in Germany. If the testator did not have such a domicile, the Berlin-Schöneberg Local Court has jurisdiction (Sec. 27 Code of Civil Procedure). 	<p>The indirect jurisdiction rule in Germany can be found in Sec. 328 of the Code of Civil Procedures. Sec. 328 provides (1) A foreign judgment will not be recognised if:</p> <ol style="list-style-type: none"> a) The foreign court did not have jurisdiction according to German law; b) The defendant, did not enter an appearance in the proceedings and took recourse to this fact, was not duly served with the document which initiated the proceedings, or was not served in such time to allow him to defend himself; c) The judgment is incompatible with a judgment delivered in Germany, or with an earlier judgment handed down abroad that is to be recognised, or the proceedings on which the judgment was based is incompatible with proceedings that are pending earlier in Germany; d) The recognition of the judgment would lead to a result that is obviously incompatible with essential principles of German law, and in particular, the recognition is not compatible with fundamental rights; e) Reciprocity has not been granted. <p>(2) The rule set out in (e) does not prevent the judgment being recognised if the judgment concerns a non-pecuniary claim and if, according to the laws of Germany, no place of jurisdiction was established in Germany.</p>
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Jurisdiction may also be conferred on a court of first instance if the defendant makes oral submissions in the main action without arguing lack of jurisdiction (Sec. 39 Code of Civil Procedure).

In Germany exclusive places of jurisdiction arise mainly as a result of special statutes. Exclusive grounds of jurisdiction include:

- Proceedings relating to land or to a right equivalent to land (e.g. a hereditary building right), exclusive jurisdiction lies in some cases with the court in whose district the property is located; this applies to proceedings relating to ownership or encumbrances on immovable property, disputes about freedom from such encumbrances, possessory actions, boundary disputes and actions for partition (Sec. 24 Code of Civil Procedure).
- Disputes arising from leases or tenancies of premises or the existence of such arrangements, exclusive jurisdiction lies with the court in whose area the leased or tenanted premises are located (Sec. 29a(1) Code of Civil Procedure). This provision does not, however, apply to rental of residential premises for temporary use (holiday homes, hotel rooms etc.), furnished premises for individual tenants, or houses and premises for official duties (Sec. 29a(2) Code of Civil Procedure).
- In the case of proceedings against the owner of a plant located in Germany, in which compensation is claimed for a loss caused by an environmental effect, exclusive jurisdiction lies with the court in whose area the environmental effect from the plant originated (Sec. 32a Code of Civil Procedure).

German procedural law recognises the possibility of choice-of-jurisdiction agreements. Under Sec. 38(1) of the Code of Civil Procedure, a court of first instance that has no jurisdiction *per se* can acquire jurisdiction as a result of an express or implied agreement between the parties. Such an agreement may be entered into only if the parties are businesses, legal entities under public law or public-law special funds

A particular court of first instance may also be given jurisdiction if at least one of the contracting parties is not within the ordinary jurisdiction of any court in Germany (Sec. 38(2) of the Code of Civil Procedure). In this case, the agreement must be made in writing or, if it is made orally, confirmed in writing. If one of the parties is within the ordinary jurisdiction of a court in

	<p>Germany, any choice-of-jurisdiction clause must as far as Germany is concerned name either that court or a special court that should have jurisdiction. Under Sec. 38(3) Code of Civil Procedure a choice-of-jurisdiction agreement is admissible only if it has been entered into expressly and in writing after the dispute arose or to cover the possibility of the future defendant moving their address or habitual residence abroad after the contract is concluded, or of their address or habitual residence not being known at the time proceedings commence.</p> <p>A choice-of-jurisdiction agreement must always relate to a particular legal relationship and legal disputes arising from it; otherwise it is invalid. It is also inadmissible if it deals with non-financial claims which are allocated to the local court, regardless of the value of the disputed subject-matter. A choice-of-jurisdiction agreement is not possible if an exclusive jurisdiction is established by law (Sec. 40 Code of Civil Procedure).</p> <p>Jurisdiction may also be conferred on a court of first instance if the defendant makes oral submissions in the main action without arguing lack of jurisdiction (Sec. 39 Code of Civil Procedure). However, jurisdiction cannot be conferred by a failure to dispute jurisdiction in the main action if a choice-of-jurisdiction agreement would be inadmissible (see above).</p>	
India		
Japan	<p>The statutory provisions on direct grounds of jurisdiction in Japan are now contained in the Code of Civil Procedure²⁵ and Civil Provisional Remedies Act.²⁶ The relevant provisions are as follows.</p> <p><i>Jurisdiction Based on the Defendant's Domicile</i></p> <p>Pursuant to Art. 3-2, a court shall have jurisdiction over an action brought against a person if the person:</p> <ul style="list-style-type: none"> (a) has his/her domicile in Japan, or (b) if the person has no domicile or his/her domicile is unknown but he/she has residence in Japan, or if the person has no residence or his/her residence is unknown but he/she had domicile in Japan before the filing of the action. <p>This excludes cases where the person had domicile in a foreign country after he/she last had domicile in Japan.</p> <p>However, notwithstanding this, a court shall have jurisdiction over an action brought against an ambassador, minister or any other Japanese</p>	<p>There are no statutory provisions regarding indirect grounds of jurisdiction in Japan. The rule on recognition of foreign judgments is provided in Art. 118 of the Code of Civil Procedure. However, it includes only a general rule concerning jurisdiction, providing that it is a requirement of recognition that a foreign court (i.e. the court of origin) had jurisdiction under laws, regulations, conventions or treaties.</p>

national in a foreign country who enjoys immunity from the jurisdiction of that country.

Moreover, a court shall have jurisdiction over an action brought against a juridical person or any other association or foundation if its principal office or business office is located in Japan, or if it has no business office or other office or the location thereof is unknown but its representative or any other principal person in charge of its business has domicile in Japan.

Jurisdiction over action relating to contractual obligation

Pursuant to Art.3-3, a Japanese court has jurisdiction to hear:

- (i) An action to claim performance of a contractual obligation or an action to make a claim relating to management without mandate conducted or unjust enrichment arising in connection with a contractual obligation, a claim for damages for non-performance of a contractual obligation or any other claim relating to a contractual obligation where the place of performance of the obligation determined by the contract is located in Japan, or where the place of performance of the obligation is supposed to be located in Japan in accordance with the law chosen under the contract.
- (ii) An action to claim payment of money for a bill or note or a check where the place of payment of the bill or note or the check is located in Japan.
- (iii) An action on a property right where the property is located in Japan, or where the action is to claim payment of money, and any seizable property of the defendant is located in Japan (excluding the case where the value of such property is extremely low).
- (iv) An action relating to real property, where the real property is located in Japan.
- (v) An action relating to business conducted at the defendant's business office or other office, which is located in Japan.
- (vi) An action against a person who conducts business in Japan (including a foreign company (meaning a foreign company as described in Art. 2, item (ii) of the Companies Act (Act No. 86 of 2005)) which carries out transactions continuously in Japan).
- (vii) An action based on a ship claim or any other claim secured by a ship, where the ship is located in Japan.
- (viii) An action involving an association or foundation which is a juridical person and is incorporated under the laws and regulations of Japan, or where the association or foundation is not

a juridical person and its principal office or business office is located in Japan.

Jurisdiction over actions relating to companies, associations or foundations

Japanese courts have jurisdiction over a company, association or foundation, which is incorporated under Japanese law or, if it is not a legal person, when its principal office is located in Japan where an action is brought by:

- (i) a company or any other association against its member or a person who was its member, an action brought by a member against another member or a person who was a member or an action brought by a person who was a member against a member, which is based on his/her status as a member;
- (ii) an association or foundation against its officer or a person who was its officer, which is based on the status as an officer;
- (iii) a company against its incorporator or a person who was its incorporator or against its inspector or a person who was its inspector, which is based on the status as an incorporator or inspector; or
- (iv) a creditor of a company or any other association against its member or a person who was its member, which is based on his/her status as a member.

Jurisdiction over actions relating to tort

Japanese courts have jurisdiction over an action relating to a tort where the tort took place in Japan (excluding cases where damage resulting from wrongful act committed in a foreign country was suffered in Japan, and the likelihood of such damage occurring in Japan was ordinarily unforeseeable).

Jurisdiction over actions relating to ships

Japanese courts have jurisdiction over actions:

- (i) for damages due to ship collision or any other accident at sea, where the first place where the damaged ship docked is in Japan; or
- (ii) relating to salvage, where the place where the salvage was performed or the first place where the salvaged ship docked is located in Japan.

Jurisdiction over actions relating to inheritance

Japanese courts have jurisdiction over actions relating to

- (i) a right of inheritance or statutory reserved share or an action relating to a testamentary gift or any other act that shall become effective upon death:
 - a. Where the decedent has domicile in Japan at the time of commencement of inheritance, where the decedent has no domicile or his/her domicile is unknown but he/she has residence in Japan at the time of commencement of inheritance, where the decedent has no residence or his/her residence is unknown but he/she had domicile in Japan before commencement of inheritance (excluding the case where the decedent had domicile in a foreign country after he/she last had domicile in Japan).
- (ii) a claim on the decedent or other burden on inherited property, which does not fall under the category of action set forth in the preceding item: As specified in said item.

Jurisdiction over Action Relating to Consumer Contract and Labour Relations

Pursuant to Art. 3-4, Japanese courts will have jurisdiction over an action:

- (i) brought by a consumer (meaning a natural person except where he/she becomes party to a contract in the exercise of, or for the purpose of, business activities) against a business operator (a natural person who becomes party to a contract in the exercise of, or for the purpose of, business activities, or a legal person, or any other association or foundation) with respect to a contract (excluding an employment contract) concluded between them, if the consumer has his/her domicile in Japan at the time of the filing of an action or at the time of conclusion of the consumer contract.
- (ii) relating to a civil dispute arising between an individual worker and his/her employer with regard to the existence or absence of a labour contract or any other matters concerning labour relations, which is brought by the worker against the employer, if the place of supply of labour under the employment contract is Japan or, if such place is not determined, the location of the place of business in which the worker is employed is in Japan.

These provisions do not apply to an action relating to a consumer contract, which is brought by a business operator against a consumer, or an action relating to an individual civil dispute in labour relations, which is brought by an employer against a worker.

Exclusive Jurisdiction

Pursuant to Art. 3-5, Japanese courts have exclusive jurisdiction over

- (i) Actions prescribed in Part VII, Chapter II of the Companies Act (excluding those prescribed in Sections 4 and 6 of said Chapter), actions prescribed in Chapter VI, Section 2 of the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006), and other actions relating to associations or foundations incorporated under laws and regulations of Japan other than said Acts which are equivalent to those actions specified herein shall be under the exclusive jurisdiction of a court of Japan. Actions relating to a registration where the place the registration should be made is in Japan. Actions relating to the existence or absence or effect of an intellectual property right (meaning an intellectual property right prescribed in Art. 2, paragraph (2) of the Intellectual Property Basic Act (Act No. 122 of 2002)) which is established upon registration of establishment in Japan.

Moreover, the provisions of Articles 3-2 through Article 3-4 and Articles 3-6 through to Article 3-9 shall not apply where exclusive jurisdiction of a court of Japan over an action in question is provided for in laws or regulations.

Jurisdiction over Joint Claims

Pursuant to Art. 3-6, if two or more claims are to be made by a single action, and a court of Japan has jurisdiction over one of those claims and has no jurisdiction over other claim(s), such action may be filed with a court of Japan only if the claims are closely connected. However, with respect to actions brought by, or against, two or more persons this shall apply only in the case specified in the first sentence of Art. 38.

(Art. 38 sets out the conditions of multi-party actions and specifies that two or more persons may sue or be sued as joint parties where the rights or obligations which constitute the subject matter of the action are common to all of them or are based on the same or same type of legal and factual background).

Agreement on Jurisdiction

Pursuant to Art. 3-7, the parties may agree on the country in which an action may be filed. In order for the agreement to be effective it must be made with respect to an action based on certain legal relationships and it must be made in writing.

	<p><i>Jurisdiction by Appearance</i> Pursuant to Art. 3-8, a Japanese court will have jurisdiction if a defendant, without objecting to the jurisdiction of the court, has made oral arguments on the merits or made statements in preparatory proceedings.</p> <p><i>Dismissal of Action without Prejudice due to Special Circumstances</i> Pursuant to Art. 3-9, even where a court in Japan has jurisdiction over an action), a court may dismiss without prejudice the whole or part of the action if, taking into account the nature of the case, the court finds that there are special circumstances in which hearing and determining the case in Japan would impair fairness between the parties or hinder the proper and efficient conduct of the hearing. In making this determination, the court may take into consideration the burden on the defendant to answer the claim, the location of the evidence and any other relevant factors. This provision does not apply in cases where an action has been brought on the basis of an exclusive jurisdiction agreement in favour of the Japanese courts or a ground of exclusive jurisdiction applies.</p> <p><i>Jurisdiction of a Case involving an Order for a Provisional Remedy</i> Pursuant to Art. 11 a petition for an order for interim relief may be made only where an action on the merits may be filed with a court in Japan, or if the asset to be provisionally seized or the disputed object is located in Japan.</p>	
<p>Korea²⁷</p>	<p>In Korea the rules on direct grounds of jurisdiction are contained in Art. 2 of the Private International Act. Pursuant to Art. 2(1), a Korean court has jurisdiction to hear a case where the dispute or the parties are substantively related to the Republic of Korea. In determining this, “the court shall obey the reasonable principles, compatible to the ideology of the allocation of international jurisdiction, in judging the existence of the</p>	<p>The provisions in Korea with respect to the recognition and enforcement of judgments can be found in the Code of Civil Procedure and the Code of Civil Execution. The Code of Civil Execution specifies that in order for a judgment to be recognised and enforced, it must comply with the conditions³² as set out in Art. 217 of the Code of Civil Procedure.³³</p>

²⁷ Answer obtained from the Republic of Korea’s response to the HCCH questionnaire completed in preparation for the *International Litigation in the Asia Pacific Conference*, Wuhan, People’s Republic of China available on the Hague Conference website at http://www.hcch.net/index_en.php?act=publications.details&pid=6001&dtid=55

³² Other conditions are (a) the defeated defendant received, pursuant to a lawful method, a service of a summons or a document equivalent thereto, and a notice of date or an order, with a time leeway sufficient to defend (excluding the case pursuant to a service by public notice or similar service), or that he responded to the lawsuit even without being served, (b) in light of the content and procedure of the judgment, its recognition does not violate good morals and other public policy of the Republic of Korea, (c) there exists reciprocity, or the conditions for recognition in the Republic of Korea and those of the state where the judgement was issued are not significantly in imbalance and are not substantially different in major parts. Also as for foreign judgments on torts, the recently added Art. 217 *bis* provides that if such a judgment results in significant violation of a basic notion under the Korean law or international treaties to which Korea is a party, the court shall not recognise the judgment in whole or in part.

³³ K. H. Suk, above n 31, 422.

substantive relations.”²⁸ Art. 2(2) further provides that a court shall determine whether or not it has international jurisdiction in light of jurisdictional provisions of the domestic law and shall take into consideration the unique notion of international jurisdiction.

There are no specific grounds of international jurisdiction in Korea as no consensus could be reached during the negotiation of the Private International Law Act as to the inclusion of specific grounds.²⁹ Several commentators have criticised the lack of specific grounds of jurisdiction.³⁰

A 2002 decision of the Supreme Court provided further guidance on the application of Art 2(1). The court stated:³¹

“In determining the international jurisdiction the court should follow the basic ideas of fairness to the parties, justice, promptness and economy of trial; more concretely, the courts should consider not only the interests of individuals such as fairness, conveniences and predictability of the litigating parties but also the interests of the courts and the state such as justice, promptness, efficiency and effectiveness of court decisions. In determining which of the various interests need to be protected, the courts shall follow in concrete cases the reasonable principles in conformity with the objective test, *i.e.*, a substantial connection between the parties and the forum, and a substantial connection between the dispute and the forum.”

However, there are domestic direct grounds of jurisdiction from which the Korean courts can seek guidance pursuant to Art. 2(2), which are found in the Code of Civil Procedure. The Code provides –

General Jurisdiction For a natural person, an action can be brought in the defendant’s domicile or where the defendant resides (Art. 2).

The jurisdictional requirement is located at Art 217(1) which states that: “the foreign court should have international jurisdiction under the principles of international jurisdiction laid down in Korean law or international treaties.” As indicated, the Code of Civil Procedure does not contain a list of grounds of jurisdiction, but rather a general test enabling courts to consider whether they have jurisdiction on a case by case basis. As with direct grounds of jurisdiction, Korean courts may also seek guidance from the domestic direct grounds of jurisdiction contained in the Code of Civil Procedure of Korea (set out in the previous column) .

²⁸ The Private International Law Act is available on the Korean Ministry of Government Legislation website at http://www.moleg.go.kr/english/korLawEng;jsessionid=LFKiiP2ifnkZMVysvCG8llhqaZYcxwXx8avPaHSBDbQBYh3nelX7KFC7zjXdYSfv.moleg_a2_servlet_engine2?pstSeq=52687&pageIndex=45

²⁹ Ministry of Justice of the Republic of Korea, Explanation of International Private Act, (Ministry of Justice of the Republic of Korea, 2001) (available in Korean only at http://www.moj.go.kr/HP/COM/bbs_03/ListShowData.do?strNbodCd=noti0021&strWrtNo=83&strAnsNo=A&strRtnURL=MOJ_10201040&strOrgGbnCd=100000).

³⁰ A. Han, “Court decisions related to international jurisdiction and proposal for amendment of International Private Act”, (Vol 35, February 2013) *Private Case Law Study*, 1082 (available in Korean only); T. Noh, “Analysis of the recent Supreme court decision related to International Judicial Jurisdiction: with study on the definition of Art. 2 and substantive relation principle under International Private Act” (Vol. 22, 2012) *Judiciary*, 209-214 (available in Korean only).

³¹ Docket No. 2002 Da 59788 as cited in K. H. Suk, “Recognition and enforcement of foreign judgments in the Republic of Korea”, (Vol 15, 2013/2014) *Yearbook of Private International Law*, 421, 424.

	<p>For a juristic person an action can be brought in the location of the defendant's principal office or the place where its business is located, or if there is no office or place of business, where the domicile of the person principally in charge of the business duties is located (Art. 5).</p> <p><i>Specific Jurisdiction</i></p> <ul style="list-style-type: none"> • an action concerning the affairs of an office or business place against a person who keeps such an office or business place may be brought before a court located in the place of such an office or business place (Art. 12). • a claim concerning a property right may be brought before the court having the jurisdiction over the place of residence or the place of obligation performance (Art 8) – (NOTE: according to Civil Act Art. 467 as for monetary claims the obligation shall be performed at the domicile of the obligee). • an action for tort may be brought before the court where the tortious act occurred (Art. 18). • an action concerning a property right against a person who has no domicile in the Republic of Korea, or against a person whose domicile is unknown, may be brought before a court located in the place of the object of the claim or those of the security, or any sizable property of a defendant (Art. 11). • if a defendant pleads to the merits of a case without contesting the jurisdiction of the court, the court will be deemed to have had jurisdiction (Art. 30). • if a claim concerns several defendants, jurisdiction can be assumed if the court has jurisdiction over one of the defendants (Art 25). • an action concerning immovable property may be brought before the court where the property is located (Art. 20). • an action concerning public register or registration may be brought before the court having the jurisdiction over the location of a public agency in charge of such register or registration (Art. 21). 	
	<p>While the Code of Civil Procedure does not contain provisions on exclusive jurisdiction, it has been suggested by some commentators that Korean courts have exclusive jurisdiction over claims concerning:³⁴</p> <ul style="list-style-type: none"> • immovable property located in Korea; 	

³⁴ *Ibid*, 427.

	<ul style="list-style-type: none"> • “the validity of the constitution, nullity or dissolution of companies or the validity of the decisions of their organs, if the company was established in Korea”; • the validity of entries onto public registers in Korea; or • the registration or validity of patents or trademarks registered in Korea. 	
<p>Mexico</p>	<p>Mexico has 32 states (<i>Entidades Federativas</i>), and each state has enacted its own Civil Code and Procedural Code. The jurisdiction provisions in Mexico are dispersed throughout all those codes, and differ between the codes as they were originally drafted to resolve jurisdictional disputes between the different Mexican states. However, due to the lack of harmonised private international law rules in Mexico, the rules found in the different codes are applied to international cases and the <i>Federal Code of Civil Procedure</i> (FCCP) largely reflects the jurisdictional grounds for all international cases in Mexico. The relevant provisions of those codes are as follows</p> <p>Under Sec. 24 FCCP the following courts shall have territorial jurisdiction -</p> <ol style="list-style-type: none"> I. the court located in the place in which the defendant indicated that it would receive a request by court order to perform an obligation; II. the court located in the place where performance of the obligation was agreed to take place; III. in cases concerning real property or disputes arising from lease agreements, the court located in the place where the property is located shall have jurisdiction. If the property is located in two or more jurisdictions, the court first seized shall have jurisdiction; IV. the court located in the place where the defendant is domiciled shall have jurisdiction to rule on actions <i>in rem</i> for movables, actions <i>in personam</i>, class actions or civil status actions; V. the court located in the place where the debtor is domiciled shall have jurisdiction over insolvency matters, including actions brought against the debtor where: <ol style="list-style-type: none"> (a) no judgment has been rendered at the time the insolvency proceedings commenced, or (b) an enforceable judgment has been rendered, so long as, 	<p>The indirect grounds of jurisdiction in Mexico are contained in the FCCP. Pursuant to Sec. 564 of the FCCP, a foreign court’s jurisdiction shall be recognised in Mexico for the purpose of the enforcement of judgments where the decision to hear the case was made on grounds that are compatible or analogous to the grounds in Mexican domestic law, unless it concerns matters which fall under the exclusive jurisdiction of Mexican courts.</p> <p>Without prejudice to section 564, Mexican courts shall recognise the jurisdiction of foreign courts if the foreign court decided to hear the case in order to prevent the denial of justice, on account of there being no court which had jurisdiction to hear the case and the Mexican court would have assumed jurisdiction in an analogous case (Sec. 565).</p> <p>Mexican courts will also recognise and enforce judgments where the parties have agreed to the jurisdiction of the courts of another State prior to the commencement of the proceedings if, in light of the circumstances and relations between them, such a choice does not imply obstruction or denial of access to justice (Sec. 566).</p> <p>Section 571 of the FCCP provides that judgments, non-commercial private arbitral awards and court orders by foreign courts shall be enforceable if they satisfy the following conditions:</p> <ol style="list-style-type: none"> I. the requirements under the FCCP as to the form of incoming letters of request for the enforcement of foreign judgments was satisfied; II. the foreign judgment, order or arbitral award was not rendered in connection with an action <i>in rem</i>; III. the court had jurisdiction to hear and pass judgment on the case in accordance with internationally recognised rules that are compatible with the rules set forth in the FCCP. Foreign courts will not be deemed to have had jurisdiction if the legal act that gave rise to the proceedings contained a clause establishing the exclusive jurisdiction of Mexican courts.

	<p>a. the judgment does not order the sale of the seized property; or</p> <p>b. the seized property has not already been sold.</p> <p>VI. in succession proceedings, the court located in the place where the decedent was domiciled at the time of death shall have jurisdiction. If no domicile is known, the court located where the real estate of the deceased is situated shall have jurisdiction, observing, where applicable, subsection III. In the absence of both domicile and real estate, the court located where the decedent died shall have jurisdiction. The court referred to in this subsection shall also have jurisdiction over:</p> <p>a) applications for probate;</p> <p>b) actions against the estate, before division and distribution of property; and</p> <p>c) actions requesting the court to quash or abate an estate or an action objecting to the division of the estate.</p> <p>VII. where the action seeks the cancellation of the entry of registered property, the court located in the place where the Public Registry of Property is kept shall have jurisdiction;</p> <p>VIII. in non-contentious matters, unless the law provides otherwise, the court located in the place where the person that initiated the proceedings is domiciled will have jurisdiction. However, if the proceedings concern real estate, the court where the property is located will have jurisdiction. Where several courts have jurisdiction based on these provisions and there is a conflict of jurisdiction, the court first seized of the case will have jurisdiction;</p> <p>IX. in disputes in which the defendant is an indigenous person, the court located in the place where he/she is domiciled will have jurisdiction. If both parties are indigenous persons, the court located in the place where the plaintiff is domiciled shall have jurisdiction.</p>	<p>IV. the defendant was served with personal notice so as to ensure the right to a fair hearing and the right to a defence;</p> <p>V. the judgment had <i>res judicata</i> effect in the country in which it was rendered, or it judgment is not subject to appeal;</p> <p>VI. the action that gave rise to the judgment was not the subject of proceedings pending between the same parties before a Mexican court where:</p> <p>i. the Mexican court was seized first;</p> <p>ii. letters of request to institute proceedings were executed and delivered to the Ministry of Foreign Affairs or the authorities of the State in which those proceedings were to be instituted; or</p> <p>iii. a final judgment has been rendered by the Mexican court.</p> <p>VII. if the judgment requires the performance of an obligation, the performance of that obligation must not be contrary to Mexican public policy; and</p> <p>VIII. the judgment must meet the requirements for foreign public documents in order to be deemed authentic in accordance with sec. 552 of the FCCP.</p> <p>Even if the above conditions are satisfied, the court may deny enforcement of the foreign judgment if the foreign judgment or award would not be deemed enforceable in the country of origin in analogous circumstances.</p>
<p>Russian Federation</p>	<p>The rules with regard to international jurisdiction in the Russian Federation are contained in Art. 247 of the Arbitration Procedure Code of the Russian Federation 2002. Article 247 provides that Russian courts have jurisdiction if:</p> <p>1) the defendant stays or resides on the territory of the Russian Federation, or the defendant's property is located on the territory of the Russian Federation;</p>	<p>The rules with regard to the recognition and enforcement of foreign judgments in Russia can be found in the Civil Procedure Code of the Russian Federation (Chapter 45. Recognition and Enforcement of Foreign Judgments and Foreign Arbitral Awards), and the Arbitration Procedure Code of the Russian Federation (Chapter 31. Proceedings on the Recognition and Enforcement of Foreign Judgments and Foreign Arbitral Awards).</p>

	<p>2) the management body, affiliate or representation of the foreign person is situated on the territory of the Russian Federation;</p> <p>3) the dispute has arisen from an agreement the execution of which shall take place or has taken place on the territory of the Russian Federation;</p> <p>4) the claim has arisen from the infliction of damage upon property by an action or other circumstance which has taken place on the territory of the Russian Federation;</p> <p>5) the dispute has arisen from an unjust enrichment, which has taken place on the territory of the Russian Federation;</p> <p>6) the plaintiff, in a case on the protection of business reputation, is situated on the territory of the Russian Federation;</p> <p>7) the dispute has arisen from relations involved in the circulation of securities, the emission of which has taken place on the territory of the Russian Federation;</p> <p>8) the applicant, in a case on the establishment of a fact of legal importance, points out the existence of this fact on the territory of the Russian Federation;</p> <p>9) the dispute has arisen from relations involved in the State registration of the names and of the other objects, and in rendering services on the World Wide Web - the Internet - on the territory of the Russian Federation;</p> <p>10) there exists a close relationship between a disputed legal relation and the territory of the Russian Federation; and</p> <p>11) the parties have agreed that the courts of the Russian Federation should resolve disputes between them. However, the agreement must have been concluded in accordance with the rule established in Art 249.</p> <p><i>Exclusive jurisdiction</i> In accordance with Art. 248, the courts of the Russian Federation have exclusive jurisdiction where:</p> <p>1) the dispute concerns property in State ownership of the Russian Federation, including disputes involving the privatisation of State property and in the forcible alienation of the property for State needs;</p> <p>2) the dispute concerns immovable property, which is located on the territory of the Russian Federation, or the rights to it are that of the Russian Federation;</p> <p>3) the dispute involves the registration or issue of patents, the registration and issue of certificates on trademarks, industrial samples and useful models, or the registration of other rights over</p>	<p>Art. 241(1) of the Arbitration Procedure Code provides that foreign judgments can be recognised and enforced in the Russian Federation, if recognition and enforcement of such judgments are provided for by an international treaty to which the Russian Federation is a party or federal law.</p> <p>While there are no specific indirect grounds of jurisdiction for the recognition and enforcement of judgments, the following grounds for refusal exist under Art. 244 of the Arbitration Procedure Code:</p> <ul style="list-style-type: none"> • the decision has not entered into force in the law of the State of origin; • the party against whom the decision was made was not notified properly about the time and place of the hearing or otherwise unable to present its case in court; • the consideration of the case was within the exclusive jurisdiction of a court in the Russian Federation; • there is a court decision of the Russian Federation concerning the same parties on the same subject and same grounds ; • there is a matter under judicial consideration in the Russian Federation between the same parties with regard to the same subject matter, which was initiated prior to the proceedings that resulted in the foreign judgment; • the statute of limitations for bringing the enforcement proceedings has expired; or • the execution of the foreign judgment would be contrary to the public policy of the Russian Federation.
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	<p>the results of intellectual activity, which require the registration or issue of a patent or of a certificate in the Russian Federation;</p> <p>4) the dispute concerns recognising invalid entries in State registers (in books of records or in cadastres), made by a competent body of the Russian Federation that keeps such a State register (book of records or cadastre); or</p> <p>5) the dispute concerns the institution, liquidation or registration on the territory of the Russian Federation of legal entities or of individual businessmen, as well as questioning the decisions of the bodies of legal entities.</p>	
<p>Serbia³⁵</p>	<p>In Serbia the statutory provisions on international jurisdiction are set forth in:</p> <ul style="list-style-type: none"> • the PIL Code (Arts 46-78, 80 and 81); • the Law on Civil Procedure (Arts 16(3) and 26); • the Law of Obligations and Basic Property Relations in Aerial Navigation (Arts 158 and 164-165); • the former Yugoslav Law on Maritime and Internal Navigation (Art. 1051); • the Law on Bankruptcy (Arts 16(2), 176, 177 and 183); • the Law on Bills of Exchange (Art. 111); • the Law on Cheques (Art. 28); • the former Yugoslav Law on Foreign Investment (Art. 17); and • the Law on Public-Private Partnerships and Concessions (Art. 60(3) and 3). <p>Presently, Art. 26 of the Code of Civil Procedure provides that Serbian courts will have international jurisdiction:</p> <ul style="list-style-type: none"> • if jurisdiction is expressly determined by a statute or an international treaty; or • if the jurisdiction arises from the provisions on local jurisdiction of the domestic court. (The second option is available if there is no express provision on jurisdiction of the domestic court for the specific type of dispute with an international element.) <p><i>Submission</i></p> <p>The court will not dismiss the action for lack of international jurisdiction if the defendant has consented to the jurisdiction of the court (the LCP, Art 16, paragraph 3). The consent may be given expressly in a choice of court</p>	<p>In Serbia the statutory provisions on the recognition and enforcement of foreign judgments are contained in the 1982 Private International Law Code. Jurisdiction of a foreign court is one of the conditions. However, the Code formulates the test negatively (<i>i.e.</i>, when a foreign judgment will not be recognised and enforced), and it does not include a statement with respect to indirect grounds of jurisdiction.</p> <p>Basically, a foreign judgment will not be recognised if the Serbian court or other Serbian authority had exclusive jurisdiction over the matter that was decided (Art 89, paragraph 1). For the exclusive jurisdiction to exist, there has to be an express provision in a statute (the PIL Code, Art 47).</p> <p>The grounds of exclusive jurisdiction under the Statutes currently in force, are the following:</p> <ul style="list-style-type: none"> - disputes concerning real rights regarding immovables, leasing of immovables and possessory actions relating to immovables, if the immovables are located in the territory of Serbia (the PIL Code, Art 56); - disputes relating to foreign investment in Serbia; (NB: even though these disputes might be referred to arbitration rather than litigation) (the former Yugoslav Foreign Investment Act, Art 17); - disputes arising out of private-public partnerships established in Serbia and concessions granted in Serbia; (NB: even though these disputes might be referred to arbitration rather than litigation) (the Act on Public-Private Partnerships and Concessions, Art 60); and - bankruptcy proceedings and disputes arising from bankruptcy, if the debtor has the centre of its main interests in Serbia (Bankruptcy Code, Art 174a – as amended in 2014).

³⁵ Answer obtained from Serbia's response to the HCCH questionnaire completed in preparation for the conference on Cross-Border Recognition and Enforcement of Judgments, St Petersburg, Russian Federation available on the Hague Conference website here http://www.hcch.net/index_en.php?act=publications.details&pid=6152&dtid=55

agreement or choice of court clause, or tacitly, by entering an appearance without raising the objection of lack of jurisdiction of the Serbian court, or by filing a pleading that contains an answer to the claim.

Defendant's domicile is in Serbia
 Serbian courts have general jurisdiction for litigious and non-litigious matters with an international element on the basis of the domicile of the defendant. If the defendant is a legal entity, then jurisdiction can be assumed if the defendant's seat is in Serbia (Art 46, paragraphs 1 and 5). There are certain exceptions to this rule, however, the most important being actions relating to immovables situated abroad.

Serbian courts also have general jurisdiction if the defendant has residence in their territory provided that two alternative conditions are met: first, the defendant has no domicile, either in Serbia or in any other country (the PIL Code, Art 46(2)) and second, the defendant is domiciled abroad, but is currently residing in Serbia and both parties (plaintiff and defendant) are citizens of Serbia (Art. 46(3)). The criterion of residence is excluded in certain disputes and jurisdiction can be based exclusively on the domicile of the defendant or on grounds of special jurisdiction specified in the relevant articles (the PIL Code, Art. 59(1), Art. 61(1), Art. 64(1), Art. 66(1), and Art. 67(1)).

Contractual or non-contractual obligations
 Serbian courts have jurisdiction in disputes arising out of contractual or non-contractual obligations that were created in Serbia or that have to be performed there, if the defendant has a representative office or agency in the Serbian territory or if he has conferred the conduct of his business to a legal entity having its seat in the Serbian territory (the PIL Code Art. 55). Serbian courts have jurisdiction in disputes on contractual claims if the contractual obligation was created at the time when the defendant was present in Serbia (the PIL Code Art. 54(2)).

It should be also noted that the law on commercial companies provides for local jurisdiction of Serbian courts for disputes arising out of matters regulated by that law, based on the place of business of the branch of a foreign corporation. This rule of local jurisdiction may be applied accordingly in order to establish international jurisdiction.

Choice of court agreements
 The choice of forum agreement in favour of a Serbian court will be enforced if at least one of the parties is a citizen of Serbia or a legal entity having its

Note - There are also certain provisions on exclusive jurisdiction of domestic courts in the former Yugoslav Law on Maritime and Internal Navigation (LMIN) (Art 1051), the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision (Art 1), the Montreal Convention for the Unification of Certain Rules for International Carriage by Air (Art 33), the International Convention on Civil Liability for Bunker Oil Pollution Damage (Art 9), etc.

It should also be noted that a Draft PIL Code was submitted to the Serbian Ministry of Justice by a designated group of experts in May 2014. Under this Draft Code, a foreign judgment will be recognised in the Republic of Serbia if:

- a court or other authority of the Republic of Serbia does not have exclusive jurisdiction over the dispute, and
- the foreign court established its jurisdiction on facts that are stipulated as grounds of jurisdiction in the law of the Republic of Serbia for the same kind of dispute.

The Draft PIL Code also basically provides the same grounds of direct jurisdiction in contract and tort cases that are provided in the EU Brussels Regulation No 1215/2012. This means that judgments based on such grounds, as well as any other equivalent grounds, will be recognised in the Republic of Serbia, provided that they do not infringe on the exclusive jurisdiction of the Serbian courts. Exclusive jurisdiction is determined in a similar way as in the current PIL Code.

Additionally, judgments based on the ground that the defendant's property is located in the jurisdiction of the court of origin will be recognised, provided that the value of the property is not significantly lower than the value of the claim, and that the dispute has a sufficient connection with the court of origin (this ground arose from a direct ground of jurisdiction for the Serbian courts under the new Draft).

	<p>seat in Serbia (the PIL Code, Art 49(2)). Similarly, the choice of forum agreement in favour of a foreign court will be enforced if the dispute does not belong to exclusive jurisdiction of Serbian courts, and if at least one of the parties is a foreign citizen or a legal entity having its seat abroad (the PIL Code, Art. 49(1)). The PIL Code does not require any special form for such agreements.</p> <p><i>Torts</i> Serbian courts have jurisdiction in disputes on non-contractual liability for damages if the damage occurred in the territory of Serbia. This provision applies also in disputes initiated by direct action of the tort victim against the insurance company for compensation of damages and in recourse actions (the PIL Code Art 53).</p> <p><i>Tangible property</i> Serbian courts have jurisdiction in disputes on contractual and non-contractual claims if the defendant's tangible or intangible property is found in the territory of Serbia (Art 54(1)).</p> <p><i>Aircraft and ship disputes</i> Serbian courts have jurisdiction in disputes on ownership, disposal with, liens on, and leasing of aircraft and ships if the aircraft or ship is registered in Serbia (Art 58(1)).</p>	
South Africa		
Spain	<p>Internal (<i>i.e.</i>, non-EU) rules on direct grounds of jurisdiction are set out in Art. 22 of the Ley Orgánica del Poder Judicial (Law of the Judiciary). The content of this provision was inspired by the 1968 Brussels Convention.</p> <p>According to Art. 22 (1), Spanish courts will have <i>exclusive jurisdiction</i>:</p> <ul style="list-style-type: none"> • in proceedings which have as their object rights <i>in rem</i> in immovable property or tenancies of immovable property located in Spain; • in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons, or the decisions of their organs, when they have their seat in Spain; • in proceedings which have as their object the validity of entries in Spanish public registers; • in proceedings concerned with the registration or validity of patents, or other similar rights required to be deposited or registered in Spain; 	<p>The internal law governing the recognition and enforcement of foreign judgments is a XIXth century Act, which – as regards jurisdiction - only envisaged the fact that the foreign judgment was based on an <i>actio in personam</i>. The Supreme Court's case law, nevertheless, has developed that rule and has established a very flexible regime applicable to indirect jurisdiction. According to this case law, a foreign judgment will be recognised and enforced in Spain, as regards jurisdiction, if there was a "<i>reasonable connection</i>" between the courts of the State of origin and the dispute. This regime calls for a case-by-case approach, where Spanish courts must take into account all the circumstances of the case and the behaviour of the parties. Direct rules of jurisdiction usually provide a "safe harbour".</p> <p>Recently, the Ministry of Justice has elaborated a Draft of Act on Cross-border Cooperation in Civil and Commercial Matters, which includes a general provision on indirect jurisdiction, codifying that case law. According to Article 46 of the Draft:</p>

	<ul style="list-style-type: none"> • in proceedings concerned with the enforcement of foreign judgments or arbitral awards in Spain. <p>According to Art. 22(2), Spanish courts will have <i>general</i> jurisdiction:</p> <ul style="list-style-type: none"> • when the parties have, expressly or implicitly, agree to such jurisdiction; or • when the defendant is domiciled in Spain. <p>According to Art. 22(3), a person domiciled abroad may also be sued in Spain in matters related to:</p> <ul style="list-style-type: none"> • contractual obligations, when these obligations were entered into or are to be performed in Spain; • non-contractual obligations, when the harmful event occurred in Spain or when both parties have their habitual residence in Spain; or • rights <i>in rem</i> in movable property, when the asset is located in Spain. <p>In addition, Art. 22(4) establishes a special regime for consumer and insurance contracts. It also includes a rule on branches: Spanish courts will have jurisdiction on disputes arising out of the operations of a branch, agency or other establishment situated in Spain.</p> <p>Finally, Art. 25 establishes a special regime for labour contracts.</p>	<p><i>“A foreign judgment shall not be recognised:... c) when it has decided on a subject matter which falls within the exclusive jurisdiction of Spanish courts or, in other cases, if the jurisdiction of the court of origin was not based on a reasonable connection with the dispute. This reasonable connection is deemed to exist if the jurisdiction of that court was based on a criterion equivalent to those laid down by the Spanish rules on direct jurisdiction”</i></p>
<p>Switzerland</p> <p>The grounds of jurisdiction in Switzerland are contained in the Federal Act on Private International Law of 18 December 1987 (FAPIL).³⁶</p>	<p>Under Art. 30(2) of the Swiss Constitution³⁷, unless otherwise provided by law, any person against whom civil proceedings have been brought has the right to have their case decided by a court within the jurisdiction in which they reside.</p> <p><i>General jurisdiction at the defendant’s domicile (Art. 2)</i> The Swiss judicial or administrative authorities at the defendant’s domicile have jurisdiction unless specific provisions of the FAPIL provide otherwise.</p> <p><i>Jurisdiction by necessity (Art. 3)</i> When the FAPIL does not provide for jurisdiction in Switzerland and proceedings in a foreign country are impossible or cannot reasonably be required, the Swiss judicial or administrative authorities at the place at which the case has a sufficient connection have jurisdiction.</p>	<p><i>General provisions regarding foreign judgments</i></p> <p>Under Art. 25 of the FAPIL a foreign decision shall be recognised in Switzerland if:</p> <ol style="list-style-type: none"> the judicial or administrative authorities of the State where the decision was rendered had jurisdiction; the decision is no longer subject to any ordinary appeal or if it is a final decision; and there is no ground for denial within the meaning of Art. 27. <p>Under Art. 26 of the FAPIL, foreign authorities have jurisdiction if:</p> <ol style="list-style-type: none"> jurisdiction derives from a provision of this FAPIL or, failing such a provision, if the defendant was domiciled in the State in which the decision was rendered;

³⁶ The English version of the Federal Act on Private International Law of 18 December 1987, as amended until 1st July 2014, is available at: www.andreasbucher-law.ch/publications.html. German, French and Italian versions of the FAPIL are available at www.admin.ch/ch/d/sr/c291.html.

³⁷ The Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 9 February 2014) is available in German, French, Italian, Romansh and English at www.admin.ch/ch/d/sr/c101.html.

Perfecting attachments (Art. 4)

When the FAPIL does not provide for any other forum in Switzerland, the action to perfect an attachment³⁸ may be brought at the Swiss forum of the attachment.

Choice of forum (Art. 5)

1. In matters involving an economic interest, parties may agree on the court that will have to decide any potential or existing dispute arising out of a specific legal relationship. The agreement may be entered into in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text. Unless otherwise agreed, a choice of forum is exclusive.
2. A choice of forum has no effect if it results in abusively depriving a party of the protection granted to it by a forum provided by Swiss law.
3. The chosen court may not deny jurisdiction:
 - a. if a party is domiciled or has its habitual residence or a place of business in the canton where the chosen court sits; or
 - b. if, pursuant to the FAPIL, Swiss law is applicable to the dispute.

Implied consent (Art. 6)

In matters involving an economic interest, a court shall have jurisdiction if the defendant proceeds on the merits without reservation, unless such court denies jurisdiction to the extent permitted by Article 5, paragraph 3.

Counterclaim (Art. 8)

The court before which the main claim is brought shall also entertain any counterclaim, provided there is a nexus between the claim and counterclaim.

Co-defendants and plurality of actions, third party actions and civil claims (Art. 8a, 8b and 8c)

Applicable only if Swiss courts have jurisdiction for all claims concerned (no direct grounds of jurisdiction in the traditional understanding of this expression; Art. 8a, 8b and 8c only intend to co-ordinate proceedings inside Switzerland).

Interim relief (Art. 10)

Jurisdiction to order interim relief lies:

- b. in matters involving an economic interest, the parties submitted to the jurisdiction of the authority that rendered the decision by means of an agreement valid under the FAPIL;
- c. in matters involving an economic interest, the defendant proceeded on the merits without reservation; or
- d. in the case of a counterclaim, the authority that rendered the decision had jurisdiction to entertain the main claim and there was a nexus between the claim and counterclaim.

Foreign decisions concerning real property rights and personal property rights (Art. 108)

1. Foreign decisions in matters of real property rights shall be recognised in Switzerland if they were rendered in the State in which the property is located or if they are recognised in such State.
2. Foreign decisions in matters of personal property rights shall be recognised in Switzerland:
 - a. if they were rendered in the State of the domicile of the defendant; or
 - b. if they were rendered in the State in which the property is located, insofar as the defendant had its habitual residence there.

Foreign decisions concerning securities (Art. 108d)

Foreign decisions regarding securities held with an intermediary shall be recognised in Switzerland:

- a. if they were rendered in the State of the defendant's domicile or habitual residence; or
- b. if they were rendered in the State of the defendant's place of business, provided the action arose out of the operations of that place of business.

Foreign decisions concerning intellectual property rights (Art. 111)

1. Foreign decisions relating to the infringement of intellectual property rights shall be recognised in Switzerland:
 - a. if the decision was rendered in the State of the defendant's domicile; or
 - b. if the decision was rendered at the place where the act or the result occurred and if the defendant was not domiciled in Switzerland.
2. Foreign decisions pertaining to the existence, validity or registration of intellectual property rights shall be recognised only if they were rendered in a State in which the intellectual property protection was sought or if such decisions are recognised there.

³⁸ „Arrest/séquestre“ = provisional measure in order to seize assets, which ceases to have effects unless confirmed by an action.

- a. with either the Swiss courts or authorities having jurisdiction over the principal action; or
- b. with the Swiss courts or authorities at the place where the interim measures are to be enforced.

Infringements of personal rights (Art. 33)

2 [...] infringements of personal rights are governed by the provisions of the FAPIL relating to torts (Art. 129 *et seq.*).

Real property (Art. 97)

The courts at the place where real property is located in Switzerland have exclusive jurisdiction to entertain actions relating to real property rights.

Personal property (Art. 98)

1. Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions relating to personal property rights.
2. Swiss courts at the place where the property is located also have jurisdiction.

Cultural property (Art. 98a)

The court at the domicile or at the registered office of the defendant or the court at the place where the cultural property is located has jurisdiction to entertain actions for recovery within the meaning of Art. 9 of the Transfer of Cultural Property Act of 20 June 2003.

Securities held with an intermediary (Art. 108b)

1. Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions regarding securities held with an intermediary.
2. Swiss courts at the defendant's place of business also have jurisdiction to entertain actions regarding securities held with an intermediary arising out of the operations of such a place of business.

Intellectual property (Art. 109)

1. Swiss courts of the defendant's domicile have jurisdiction to entertain actions pertaining to the validity or registration in Switzerland of intellectual property rights. When a defendant does not have a domicile in Switzerland, these actions shall be brought before the Swiss courts at the commercial office of the representative recorded in the register or, in the absence of such representative, before the courts at the place where the authority keeping the register has its office.

Foreign decisions concerning the law of obligations (Art. 149)

1. Foreign decisions relating to a right pertaining to the law of obligations shall be recognised in Switzerland:
 - a. if they were rendered in the State of the defendant's domicile; or
 - b. if they were rendered in the State of the defendant's habitual residence, insofar as the rights relate to an activity carried out in such State.
2. They shall also be recognised:
 - a. if the decision pertains to a contractual obligation, was rendered in the State of performance of the characteristic obligation and the defendant was not domiciled in Switzerland;
 - b. if the decision pertains to a claim relating to a contract made with a consumer, was rendered at the consumer's domicile or habitual residence, and the requirements provided in Art. 120, paragraph 1, are met;
 - c. if the decision pertains to a claim under an employment contract and was rendered either at the place of the enterprise or at the place of work, and the employee was not domiciled in Switzerland;
 - d. if the decision pertains to a claim arising out of the operation of a place of business and was rendered at the location of such place of business;
 - e. if the decision pertains to unjust enrichment, was rendered at the place where the act or result occurred, and the defendant was not domiciled in Switzerland; or
 - f. if the decision pertains to an obligation in tort, was rendered at the place where the act or the result occurred, and the defendant was not domiciled in Switzerland.

Foreign decisions concerning trusts (Art. 149e)

1. Foreign decisions in matters regarding a trust shall be recognised in Switzerland:
 - a. if they were rendered by a court that was validly designated pursuant to Art. 149b, paragraph 1;
 - b. if they were rendered in the State in which the defendant was domiciled, habitually resident or had a place of business;
 - c. if they were rendered in the State in which the trust has its registered office;
 - d. if they were rendered in the State whose law applies to the trust; or
 - e. if they are recognised in the State in which the trust has its registered office, provided the defendant was not domiciled in Switzerland.

2. Actions pertaining to the violation of intellectual property rights shall be brought before the Swiss courts at the defendant's domicile or, in the absence of a domicile, at the defendant's habitual residence. The Swiss courts at the place where the act or the result occurred also have jurisdiction, and, in entertaining actions pertaining to the operation of the place of business in Switzerland, so too do the courts at the place of business.

Contracts - Domicile and Place of business (Art. 112)

1. Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions arising out of a contract.
2. Swiss courts at the defendant's place of business also have jurisdiction to entertain actions relating to an obligation arising out of the operation of such place of business.

Contracts – Place of performance (Art. 113)

When the characteristic obligation of the contract must be performed in Switzerland, the action may also be brought before the Swiss Court at the place of performance.

Consumer contracts (Art. 114)

1. With respect to contracts which meet the requirements stated in Article 120⁴⁰, paragraph 1, the action initiated by a consumer may be brought at the latter's choice before the Swiss court:
 - a. at his or her domicile or habitual residence; or
 - b. at the domicile or, in the absence of a domicile, at the habitual residence of the supplier.
2. A consumer may not waive jurisdiction at his or her domicile or habitual residence in advance.

Employment contracts (Art. 115)

1. Swiss courts at the defendant's domicile or at the place where the employee habitually performs his or her work have jurisdiction to entertain actions relating to employment contracts.
2. An action initiated by an employee may also be brought before the court of his or her domicile or habitual residence in Switzerland.

2. Art. 165³⁹, paragraph 2, shall apply by analogy to foreign decisions relating to claims regarding public issues of equity or other securities based on prospectuses, circulars or similar publications.

Foreign decisions concerning company law (Art. 165)

1. Foreign decisions relating to claims concerning company law shall be recognised in Switzerland if:
 - a. they were rendered or are recognised in the State of the registered office of the company, provided the defendant was not domiciled in Switzerland; or
 - b. they were rendered in the State of the defendant's domicile or habitual residence.
2. Foreign decisions relating to claims concerning public issues of equity or debt securities based on prospectuses, circulars or similar publications shall be recognised in Switzerland if they were rendered in the State in which the equity or debt securities were issued, provided the defendant was not domiciled in Switzerland.

³⁹ Art. 165 para. 2 Foreign decisions relating to claims concerning public issues of equity or debt securities based on prospectuses, circulars or similar publications shall be recognized in Switzerland if they were rendered in the state in which the equity or debt securities were issued, provided the defendant was not domiciled in Switzerland.

⁴⁰ Art. 120 concerns contracts pertaining to goods or services of ordinary consumption intended for a consumer's personal or family use, provided such use is not connected with the consumer's professional or business activity.

3. Swiss courts of the place where an employee hired abroad is posted for a limited period to perform all or a part of the services for which he or she was employed, also have jurisdiction to entertain actions pertaining to the terms of employment and salary in connection with such services.

Unjust enrichment (Art. 127)

Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions for unjust enrichment. Courts at the place of business in Switzerland also have jurisdiction to entertain actions pertaining to the operation of the place of business.

Torts – in general (Art. 129)

Swiss courts at the domicile or, failing a domicile, at the habitual residence of the defendant have jurisdiction to entertain actions in tort.

Swiss courts at the place where the act or the result occurred also have jurisdiction, as well as the courts at the place of business when the action pertains to the operation of the place of business in Switzerland.

Torts – in particular (Art. 130)

Actions to enforce the right of access directed against the keeper of a database may be brought before the courts mentioned in Article 129 or before the Swiss courts at the place where the database is managed or used.

Direct action against an insurer (Art. 131)

A direct action against an insurer of civil liability may be brought before the Swiss courts either at the insurer's place of business in Switzerland or at the place where the act or the result occurred.

Trusts (Art. 149b)

1. In matters concerning a trust, the choice of forum contained in the trust deed shall prevail. The choice of forum or the authorisation to choose the forum contained in the trust deed may only be taken into consideration if it is made in writing or in any other form which permits it to be evidenced by a text. Unless otherwise provided, a choice of forum is exclusive. Article 5, paragraph 2, shall apply by analogy.
2. The chosen court may not deny jurisdiction:
 - a. if one of the parties, the trust or one of the trustees is domiciled, habitually resident or has a place of business in the canton where the court is located, or
 - b. if a major share of the assets of the trust are located in Switzerland.

	<p>3. Where there is no valid choice of forum, or if the choice of forum is not exclusive, jurisdiction shall lie with the Swiss courts:</p> <ol style="list-style-type: none"> a. at the domicile or, in the absence of a domicile, at the habitual residence of the defendant; b. at the registered office of the trust; or c. for claims arising out of the operations of a place of business in Switzerland, at such place of business. <p>4. Disputes regarding liability arising out of the public issue of equity and other securities may also be brought before the Swiss courts at the place of issue. This jurisdiction may not be excluded by a choice of forum.</p> <p><i>Companies (Art. 151)</i></p> <ol style="list-style-type: none"> 1. In matters concerning company law, Swiss courts at the registered office of the company have jurisdiction to entertain actions against a company, its shareholders or members, or persons liable under company law. 2. Swiss courts at the domicile or, failing a domicile, at the habitual residence of the defendant also have jurisdiction to entertain actions against the shareholders or members of the company, or persons liable under company law. Notwithstanding a choice of forum, Swiss courts at the place of a public issue also have jurisdiction over disputes concerning liability for public issues of equity and other securities. 3. Swiss courts at the place of the registered office of the company involved have jurisdiction to entertain actions concerning the suspension of the voting rights pursuant to the Law of 24 March 1995 on the Stock Exchange and Securities Trading. <p><i>Liability for a foreign company (Art. 152)</i></p> <p>The following courts have jurisdiction to entertain actions against a person liable under Art. 159⁴¹ or against a foreign company for which such person is acting:</p> <ol style="list-style-type: none"> a. Swiss courts at the domicile or, in the absence of a domicile, at the habitual residence of the defendant; or <p>Swiss courts at the place where the company is in fact managed.</p>	
<p>United Kingdom</p>	<p>Where neither the Brussels I Regulation nor the Lugano Convention apply, residual national rules govern the assumption of jurisdiction by UK courts. It should be understood that the legal systems of the different territories of the UK are distinct, divided into England and Wales; Northern Ireland; and Scotland. Each has their own rules in this regard, although there are close similarities.</p>	<p>English law uses indirect jurisdictional rules in the context of recognition and enforcement of foreign judgments. The position is the same in Northern Ireland and in Scotland.</p>

⁴¹ Art. 159 provides that when the operations of a company established under a foreign law are managed in or from Switzerland, the liability of the persons acting on behalf of such company is governed by Swiss law.

In England and Wales:

Where the defendant is served with process in England and Wales or abroad in circumstances authorised by statute or statutory instrument – NB claims in personam

- The Defendant is present and duly served with process in England and Wales;
- the Defendant is a Foreign Corporation or firm carrying out business in England and Wales when the cause of action arose;
- the Defendant is a company registered in England and Wales (this is considered “presence”) – it can be served at its registered address;
- the defendant is a company with a branch in England and Wales (even if the claim has no England and Wales connection);
- the defendant submits to the jurisdiction, regardless of presence or service within England and Wales;
- jurisdiction is clearly given to the Courts of England and Wales by the terms of a relevant statute, regardless of presence or service of the defendant in England and Wales.

Note – although in these situations the Claimant has a right to demand that the court exercises its jurisdiction, the defendant can apply for the court to stay the proceedings on the grounds that England and Wales is not an appropriate forum (forum non conveniens). The English courts’ approach to forum non conveniens reflects that discussed on forum conveniens below.

Where a dispute involves a person or property outside the jurisdiction of England and Wales (leaving aside for these purposes the inter-UK arrangements with Scotland and Northern Ireland, which are governed by UK legislation), the claimant has to obtain permission of the court to serve proceedings “out” of the jurisdiction. The grounds on which permission to “serve out” may be sought are listed in the Civil Procedure Rules 1998, Part 6 and Practice Direction 6B. Service of process is the foundation of jurisdiction, but it is not sufficient for a claimant to show that there is a ground for service out – showing such a ground does not in itself confer jurisdiction on the courts of England and Wales and there is no “right” to be granted permission to serve out. If a ground (listed below) is shown, the court has a *discretion* whether or not to give permission (and therefore exercise jurisdiction over the dispute), and will exercise that discretion on the basis of two key principles –

In English law there are two main systems – recognition under the common law, and the system of registration of judgments comprised in the *Foreign Judgments (Reciprocal Enforcement) Act 1933*.

Common law –

Direct execution of a foreign judgment is not possible therefore the judgment creditor has to take an action on a foreign judgment. Usually, they will use the summary procedure under Part 24 of the Civil Procedure Rules 1998, asserting that the judgment debtor has no reasonable prospect of success.

The applicant will need to demonstrate that the foreign court had jurisdiction to determine the claim on which the foreign judgment is founded by virtue of the following English PIL rules:

Claims in personam: in relation to the foreign proceedings, the judgment debtor -

- (c) was present in that jurisdiction at the time proceedings were instituted;
- (d) was the claimant or the counter claimant;
- (e) voluntarily submitted to the jurisdiction of the foreign court; or
- (f) previously agreed to submit to that jurisdiction/ was subject to a choice of court agreement.

In all cases, it must be clear that no choice of court agreement has been breached, and that the assumption of jurisdiction by the foreign court did not breach an international agreement to which England and Wales is party and which would govern those proceedings. The applicant will also not succeed if the judgment debtor did not submit to the jurisdiction and would be entitled to immunity from the jurisdiction of the foreign court.

Claims in rem: Under English PIL rules, the foreign court has jurisdiction for recognition and enforcement purposes if the subject matter of the claim is title to or possession of movable or immovable property situate within its jurisdiction. There will be no jurisdiction in the foreign court for English PIL purposes if it rules in relation to immovable property situate outside its jurisdiction.

The position is substantially the same in Scotland and in **Northern Ireland** but each has its own procedural rules. Order 14 of the Rules of the Court of Judicature (Northern Ireland) 1980 in respect of Northern Ireland contains the summary procedure used by creditors to assert that the debtor has no reasonable prospect for success in that jurisdiction. In **Scotland**, a foreign judgment is enforced by applying to the *nobile officium* of the Court of Session for a decree conform to the decree of the foreign court. The major differences

- (a) is the case a fit and proper case for service of the proceedings out of the jurisdiction; and
- (b) are the courts of England and Wales the appropriate place (the *forum conveniens*) for the dispute to be litigated? The point is that the case should be tried in the place where it can most suitably be tried in the interests of all the parties and the ends of justice.

In relation to the first principle, the claimant has to show that there is a reasonable prospect of success on the merits of the case. It is also necessary to show that there is a good arguable case that one of the grounds for service out exists.

In relation to determining whether England and Wales is the appropriate forum, the courts will have regard to the circumstances of the case, including the nature of the dispute, the legal and practical issues involved, such questions as local knowledge, availability of witnesses and their evidence, and expense. The residence or place of business of the defendant, and the relevant ground for service out invoked by the claimant might be relevant. These factors will not necessarily be exhaustive nor have any particular hierarchy – the court will give relevant factors the appropriate weight indicated by the circumstances of the case. The court will also refuse permission if there is an agreement between the parties to litigate the matter in another jurisdiction (choice of court).

In relation to the grounds which must be shown in order for the court to consider whether to permit service out, these are listed in the Civil Procedure Rules in Practice Direction 6B. They are as follows:

- (a) the claim is for a remedy against a person domiciled in England and Wales;
- (b) the claim is for an injunction ordering the defendant to do or refrain from doing something in England and Wales;
- (c) where a second person is a proper or necessary defendant to a claim against a first defendant, e.g. joint debtors, or the claim is against D1 and D2 in the alternative (and this includes additional claims under Part 20 of the Civil Procedure Rules, i.e. claims by a defendant for contribution or indemnity from a third person regarding the claim);
- (d) an interim remedy is sought under s.25 of the Civil Jurisdiction and Judgments Act 1982 (enabling relief to be granted by the English court in support of proceedings where a court in another jurisdiction has jurisdiction);
- (e) in contract cases, where –
 - the contract was made in England and Wales; or

from England are that: residence rather than presence is required by the defendant in the State of origin at the time the court there was seized and that a foreign court’s exercise of an interdict jurisdiction will be recognised when it was preventing the commission of a wrong within the foreign court’s own territory.

Under Statute:

Under the *Foreign Judgments (Reciprocal Enforcement) Act 1933*, there is a registration system enabling judgment creditors to register their foreign judgment in England and Wales. The system depends on reciprocity and therefore it will apply only where the country in question is one with which England and Wales reciprocates. Once registered, the judgment will be treated as if it was the judgment of the registering court. The indirect rules of jurisdiction are relevant if someone seeks to set aside registration. Registration can be set aside if the foreign court had no jurisdiction according to the rules of the 1933 Act. These are as follows:

For claims *in personam*, the foreign court will be considered to have had jurisdiction over the original claim where the judgment debtor –

- (a) voluntarily submitted to its jurisdiction by appearing voluntarily in the proceedings;
- (b) was the claimant or counter claimant;
- (c) is party to a choice of court agreement regarding that court;
- (d) was the defendant in the proceedings and resident in that country at the time the proceedings were instituted (or, as a body corporate, had its principal place of business in that country);
- (e) or was the defendant in the proceedings and had its office or place of business in that country, where the proceedings concerned a transaction effected through that office/ place of business (i.e. “branch jurisdiction”).

Claims in rem - For claims where the subject matter is immovable property, or the claim is a claim *in rem* concerning movable property, the foreign court will be considered to have had jurisdiction where the property was at the time of the proceedings in the original court situate in the country of that court.

The foreign court will not be deemed to have jurisdiction in any case where –

- (a) the subject matter of the proceedings was immovable property outside the country of the foreign court; or
- (b) if the judgment debtor, being a defendant in the original proceedings, was a person who, under the rules of public international law, was entitled to immunity from the jurisdiction of that court and did not submit to the jurisdiction.

- the contract was made by or through an agent trading or residing in England and Wales (but not if the agent is the claimant’s agent);
 - the contract is governed by English law (although this is not necessarily conclusive for the taking of jurisdiction);
 - the contract contains a term that the English courts have jurisdiction to determine a claim regarding the contract.
- (f) the claim is for breach of contract committed in England and Wales, where the relevant performance was required to be done in England and Wales under the terms of the contract (performance in England and Wales *or somewhere else* is not sufficient);
- (g) the claim is in tort and the damage was sustained in England and Wales, or resulted from an act committed within England and Wales;
- (h) the claim is brought to enforce a judgment or arbitral award (and registration is not possible – see “indirect grounds”);
- (i) the whole subject matter of the claim relates to property located in England and Wales;
- (j) the claim is for a remedy which might be obtained in proceedings to execute the trusts of a written instrument, where the execution should be under English law and the Defendant is a trustee;
- (k) the claim is for a remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled in England and Wales;
- (l) the claim is a probate claim or a claim for the rectification of a will.

As noted, the position is substantively the same in **Northern Ireland** although it has its own procedural rules. These are contained in the Rules of the Court of Judicature (Northern Ireland) 1980 and the County Court Rules (Northern Ireland) 1981 (Order 11 and Order 6A of those rule respectively deal with service outside the jurisdiction).

Scotland

The residual national rules governing the jurisdiction of the Scottish courts in cases where neither the Brussels I Regulation, nor the Lugano Convention applies are contained in Schedule 8 to the Civil Jurisdiction and Judgments Act 1982. (The rules regarding the allocation of jurisdiction between UK jurisdictions are contained in Schedule 4 to that Act).

Broadly speaking the Scottish rules of jurisdiction in Schedule 8 to the 1982 Act mirror the Brussels I Regulation rules before the recast. However, there are a few variations on those grounds (*e.g.*, place of performance of the obligation in question is always the contract jurisdiction) and a few notable

The 1933 Act applies to Scotland and Northern Ireland (with some minor modifications which do not affect the above description). Broadly similar rules apply under the Administration of Justice Act 1920 to the recognition of judgments of the superior courts of those Commonwealth countries listed in Schedule 1 to the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Consolidation) Order (S.I. 1984/129).

Reciprocal Enforcement within the UK

The Civil Jurisdiction and Judgments Act 1982 (the 1982 Act) governs intra-UK enforcement of civil and commercial judgments and distinguishes between money (schedule 6) and non-money (schedule 7) judgments. Consequently the 1982 Act applies to interdict, specific implement and arbitration awards.

Schedule 6 – Money Provisions

An interested party wishing to enforce any money aspects of a judgment may apply for a certificate in a particular form. A certificate is not issued unless under the law of the part of the UK in which judgment was given either the time for appealing against the judgment has expired or if the appeal has been finally disposed of. The certificate can then form the basis of an application by an interested party to the officer of the court which is the Court of Session in Scotland.

	<p>additional grounds of direct jurisdiction that affect defenders who are not domiciled in an EU or Lugano State: general jurisdiction if the defender owns immoveable property in Scotland or he has moveable property in Scotland which has been arrested there; and specific jurisdiction in proceedings concerning a debt over immoveable property in Scotland and to supervise arbitration proceedings in Scotland.</p>	
<p>United States of America</p>	<p>A U.S. court’s ability to exercise personal jurisdiction can be based on either “general” jurisdiction, which permits jurisdiction when the defendant is tied to the forum in certain ways such as domicile of a natural person or place of incorporation of a legal person, or “specific” jurisdiction, which requires a constitutionally sufficient connection among the defendant, the forum, and the conduct giving rise to the cause of action.</p> <p>While there is no explicit “list” of bases of personal jurisdiction in U.S. courts, the courts in principle apply a two-step analysis in making jurisdictional determinations:</p> <p>The first step involves consideration of applicable statutes which set forth basic rules of jurisdiction, usually state statutes called “long-arm” statutes.⁴² Each state has a statute setting out basic rules of jurisdiction. Normally, state statutes are separated between provisions dealing with general jurisdiction⁴³ and provisions dealing with “specific” jurisdiction.⁴⁴ In the second step, the court determines whether, even if jurisdiction would otherwise exist under the terms of the applicable statute, that jurisdiction is consistent with the Due Process clause in either the Fifth or Fourteenth Amendments of the United States Constitution.</p> <p>The Supreme Court has recently explained that, “[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s</p>	<p>In the United States, the test of personal jurisdiction applied for purposes of recognition and enforcement of a foreign judgment is the same as, and co-extensive with, the test for direct jurisdiction over a person. Accordingly, a judgment generally will be eligible for recognition and enforcement if the court of origin could have exercised jurisdiction over the defendant on a basis of jurisdiction available in the court addressed. Further, a judgment generally will not be eligible for recognition or enforcement if the court of origin did not exercise jurisdiction over the defendant on a basis of jurisdiction available to the court addressed.</p> <p>Recognition of foreign judgments generally is governed by state law in the United States. In thirty-three states (plus the District of Columbia and the U.S. Virgin Islands), the rules are statutory under either the 1962 Uniform Foreign Money-Judgments Recognition Act (UFMJRA) or its revision, the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA).⁴⁹ The remainder of the states apply common law principles of comity to the recognition of foreign judgments. In addition, in certain cases in which a federal interest is involved, federal law is applied instead of either state statutory or state common law.⁵⁰ As noted earlier, under all three sources of law, a U.S. court will deny recognition if the rendering court would not have had personal jurisdiction over the defendant under the rules of personal jurisdiction applicable in U.S. courts.⁵¹</p>

⁴² Rule 4(k)(1)(a) of the Federal Rules of Civil Procedure generally “borrows” the state statute, so that personal jurisdiction in a Federal District Court involves the same analysis as in a state court in the same location, unless a specific federal statute provides otherwise. *See Walden v. Fiore*, 571 U.S. ___, slip op. at 5_ (2014) (“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. This is because a federal district court’s authority to assert personal jurisdiction in most cases is linked to service of process on a defendant ‘who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.’”) (citations omitted).

⁴³ *See, e.g.*, New York Civ. Prac. L. & R. § 301; 42 Pa. Cons. Stat. Ann. § 5301.

⁴⁴ *See, e.g.*, New York Civ. Prac. L. & R. § 302; 42 Pa. Cons. Stat. Ann. § 5322.

⁴⁹Nineteen states and the District of Columbia have the UFCMJRA. Fourteen states and the U.S. Virgin Islands have the UFMJRA.

⁵⁰ *See Hurst v. Socialist People’s Libyan Arab Jamahiriya*, 474 F. Supp. 2d 19 (D.D.C. 2007) (“Ordinarily, a federal court applies federal law on claim and issue preclusion in non-diversity cases And in determining whether to recognize the judgment of a foreign nation, federal courts also apply their own standard in federal question cases.”); Restatement (Second) of Conflicts of Law, sec. 98, comment c (noting that “apart from federal question cases”, recognition of the judgments of foreign nations is generally governed by state law).

⁵¹ UFCMRA, sec. 4(a)(2); UFMJRA, sec. (4)(a)(2); Restatement (Third) of the Foreign Relations Law of the United States, sec. 482(b). For example, section 5 of both the UFCMRA and the UFMJRA provides a list of acceptable grounds for personal jurisdiction which is based on U.S. law. It further provides that the court may recognize other bases of jurisdiction as adequate. U.S. courts have held that this latter provision means that the forum court should recognize a foreign judgment based on any jurisdictional ground that would be recognized under the forum’s internal law, including the forum’s long arm statute. *See, e.g.*, *Porsins v. Petricca*, 456 N.Y.S. 2d 888, 950 (N.Y. App. 1982); *CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 743 N.Y.S. 2d 408, 420 (N.Y. App. 2002).

	<p>domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”⁴⁵ For specific jurisdiction, the constitutional analysis may be less clear, but requires sufficient connection among the defendant, the forum, and the conduct giving rise to the action.⁴⁶ Thus, for example, in a tort case, the mere fact that the injury occurs in the forum state is not sufficient to ground specific jurisdiction there without additional connections between the forum, the defendant’s conduct, and the cause of action.⁴⁷</p> <p>Some states effectively combine these two steps by having a long-arm statute that permits the exercise of jurisdiction on any basis not barred by constitutional constraints.⁴⁸</p>	<p>As a result, in the United States, there is no difference or gap between the bases of direct jurisdiction available for purposes of bringing an action in a U.S. court and the bases of indirect jurisdiction upon which a foreign judgment may be grounded for purposes of recognition and enforcement in a U.S. court.</p>
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⁴⁵ Daimler AG v. Bauman, 134 S. Ct. 746, 760 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S., at ___, 131 S. Ct., at 2853–2854 (citing Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 728 (1988)).

⁴⁶ See Walden v. Fiore, 571 U.S. ___, slip op. at 6 (2014) (explaining that the inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant “‘focuses on the relationship among the defendant, the forum, and the litigation.’”) (citations omitted).

⁴⁷ See J. McIntyre Machinery Ltd. v. Nicastro, 131 S. Ct. 2780 (2011).

⁴⁸ See, e.g., Cal. Civ. Proc. Code Ann. sec. 410.10; Nev. Stat. sec. 14.065.