

**Conference on *International Litigation in the Asia Pacific*
Wuhan, 23 - 24 September 2013**

**QUESTIONNAIRE ADDRESSED TO STATES PARTICIPATING IN THE ASIA PACIFIC
REGIONAL EVENT ON INTERNATIONAL LITIGATION**

The purpose of the Questionnaire is to collect information from States regarding the recognition and enforcement of foreign judgments and issues of international jurisdiction in the Asia Pacific region. This information will be used by the Permanent Bureau of the Hague Conference to create a country profile for each State that will assist delegates during the round table discussion session on the first day of the Conference. It is also hoped that the detailed information in the responses to this Questionnaire may be of use to participants beyond this conference.

The concept for the round table discussion session stems from the work the Permanent Bureau is currently undertaking on two key aspects of private international law in cross-border litigation: international jurisdiction and the recognition and enforcement of foreign judgments. A detailed chronology to the background of the work undertaken by the Hague Conference in this area can be located on the website of the Hague Conference < www.hcch.net >, under "Specialised Sections", then "Judgments Project".

The Questionnaire has two parts. Part I contains questions regarding the recognition and enforcement of foreign judgments and Part II contains questions on jurisdictional issues in international litigation. Please note that the Permanent Bureau has used the same terminology in the Questionnaire as that which was used in the two detailed notes that the Permanent Bureau recently prepared for the work being undertaken in this area. These notes identify the issues for consideration in the study of the recognition and enforcement of foreign judgments and jurisdiction in international litigation. For more information on these two topics and for a contextual background to the Questionnaire, please refer to these two notes which are located on the Judgments Project webpage listed above. The notes are titled, "Annotated Checklist of Issues to be discussed by the Working Group on Recognition and Enforcement of Judgments" (Note 1) "Issues Paper on Matters of Jurisdiction including Parallel Proceedings" (Note 2). A glossary of the terminology used is also located on the Judgments Project webpage, titled Annex I: Glossary to the Annotated Checklist.

The Permanent Bureau would very much appreciate receiving your response to this Questionnaire by 2 September 2013. Responses should be sent by e-mail to secretariat@hcch.net with the following heading and indication in the subject field: "Questionnaire concerning international litigation – [name of State]". Your co-operation in responding to this Questionnaire is very much appreciated and will greatly assist during the round table discussion session.

Identification (For follow-up purposes)

Name of the State:

Name of contact person:

Telephone number:

E-mail address:

PART I – RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION

NOTE: If your State has a non-unified legal system (*i.e.*, two or more systems of law which apply in different territorial units), and the information is available, please indicate the jurisdiction/s referred to in your answers.

1. Is your State a party to any bilateral and/or multilateral treaties and/or agreements that govern the recognition and enforcement of foreign judgments?

YES

NO

If yes, please specify.

We are, however, a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").

2. Does your State have rules of national law that govern the recognition and enforcement of foreign court judgments in your State? (*i.e.*, legislation or case law)

YES

NO

If yes, please specify.

3. Which courts in your State hear applications for the recognition and enforcement of foreign judgments?

Please specify.

The Regional Trial Court

4. Are there specific conditions that need to be met in order for a judgment to be recognised and enforced by a court in your State?

YES

NO

If yes, under what circumstances (*e.g.*, the jurisdiction of the foreign court must be recognised, the respondent to the application for recognition and enforcement must have assets in your State, the judgment must be a monetary judgment that is final and conclusive)?

- (1) There must be adequate proof of foreign judgment
- (2) The judgment must not be on a criminal, revenue or administrative matter, it must be limited to a civil or commercial matter
- (3) The court that rendered the judgment is with jurisdiction (necessarily the party has been notified of the same)
- (4) The judgment is not tainted with clear mistake of law and fact
- (5) The judgment must be *res judicata*

5. Can a court in your State refuse to recognise and enforce a foreign court judgment that otherwise meets the specific conditions identified in Part I question 4?

- YES
 NO

If yes, under what conditions (*e.g.*, procedural fairness, lack of proper notice to the defendant, an inconsistent foreign or domestic judgment, parallel domestic proceedings)? In addition, are those grounds for refusal raised on the court's own motion or by the party opposing the recognition and enforcement application?

- (1) The requisite proof of foreign judgment has not been presented.
(2) The foreign judgment contravenes recognized and established policies in the Philippines.
(3) The administration of justice in the country where the foreign judgment came from may be shockingly corrupt or beyond reproach.

6. Is recognition and enforcement of a foreign judgment subject to a special procedure before a court in your State?

- YES
 NO

If yes, please describe the procedure.

Section 48, Rule 39 of the Philippine Rules of Court provides for specific effects of foreign judgments, namely:

(a) judgment or final order upon a specific is conclusive upon the title to the thing;

(b) judgment or final order against a person is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

It must, however, be noted that a separate action must still be filed, proved and authenticated before a foreign judgment can be recognized and enforced.

7. What types of judgments are entitled to recognition and enforcement in your State?

Judgments entered in default
Comments.

Provisional and protective measures
Comments.

Non-money judgments
Comments.

Judgments awarding non-compensatory damages
Comments.

Other.

If other, please specify.

8. In your State, is it possible to appeal a courts decision to recognise and enforce a foreign judgment?

YES

NO

If yes, under what circumstances.

Under Rule 45 for error of law or Rule 65 for grave abuse of discretion.

9. What is the frequency of applications for recognition and enforcement of foreign court decisions per year? It is appreciated that this information may not be readily available in your Ministry however; such information may possibly be obtainable from the courts in your State.

0-5

5-10

10 – 20

more than 20.

Any comments.

I APOLOGIZE BUT I WAS NOT ABLE TO PROCURE DATA ON THIS SUBJECT.

10. How many applications for the recognition and enforcement of a foreign court decision are granted in your State?

0-5

5-10

10 – 20

more than 20.

Any comments.

I APOLOGIZE BUT I WAS NOT ABLE TO PROCURE DATA ON THIS SUBJECT.

PART II – JURISDICTIONAL REQUIREMENTS

1. Is your State a party to any bilateral and/or multilateral treaties and/or agreements that govern issues of jurisdiction in international litigation?

YES

NO

If yes, please specify.

2. Does your State have rules of national law that govern issues of jurisdiction in international litigation in your State? (*i.e.*, legislation or case law)

YES

NO

If yes, please specify.

3. Have the rules of international jurisdiction in your State recently been reviewed? (e.g., by the legislators, law reform bodies, other professional bodies).

YES

NO

Comments

4. In which of the following situations would the courts in your State have jurisdiction:

where the defendant voluntarily submits to the jurisdiction

Comments

where the defendant is domiciled or resides in your State

Comments

where the defendant carries out regular commercial activity in your State

Comments

where the contract is performed or there is a breach of contract in your State

Comments

where a contract is concluded executed between parties in your State

Comments

where the parties to the dispute have designated the courts of your State for the purpose of deciding disputes between them?

Comments

where an injury occurs to a person as the result of a tortuous act occurring in your State

Comments

where damage occurs to tangible property as the result of a tortuous act occurring in your State

Comments

where the defendant does not reside in your State, but the defendant's immovable property is held in your State
Comments

Other
Please specify

5. Is the nature of the above-mentioned grounds such that without these present a court is not entitled to hear a case?
 YES
 NO
Comments.

6. In which of the following situations would a court, otherwise having jurisdiction as described in part II question 4, decline to exercise its jurisdiction in your State:

where there are identical proceedings (proceedings involving the same parties and the same cause of action) occurring in another State's courts
Please indicate the relevant source of law and any comments.

where there are related proceedings (those proceedings that do not have identical parties and causes of action but have related causes of action and parties)
Please indicate the relevant source of law and any comments.

where the court determines that it is an inappropriate forum
Please indicate the relevant source of law and any comments.

where it is in the interests of justice to do so
Please provide any comments

other
Please indicate.

A COURT, OTHERWISE HAVING JURISDICTION MAY DECLINE TO EXERCISE THE SAME BASED ON THE PRINCIPLE OF FORUM NON CONVENIENS.