

**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)

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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.

Agreement on Mutual Legal Assistance and the Recognition and Enforcement of Judgements in Civil Matters between the Government of the Republic of India and other sovereign States like UK, Aden, Fiji, Republic of Singapore, Federation of Malaysia, Trinidad and Tobago, New Zealand, the Cook Islands (including Niue) the Trust Territories of Western Samoa, Hong Kong, Papua and New Guinea, Bangladesh and United Arab Emirates

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.

The Code of Civil Procedure, 1908 governs the recognition and enforcement of judgements in our State.

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

Please specify.

District Courts

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)?

Section 44 A provides for the conditions to be met and reads as follows:

Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a district court, the decree may be executed in India as if it had been passed by the district court.

Section 44 A (2) CPC provides that together with the certified copy of the decree, a certificate from such superior court of a reciprocating territory has to be filed stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate

shall, for the purposes of proceeding under this Section, be the conclusive proof of the extent of such satisfaction or adjustment

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?

Section 13 CPC provides the several conditions when a foreign judgment shall not be considered conclusive and therefore not recognised/enforceable by the Indian courts.

Grounds for refusal may be raised on the court's own motion or by the party opposing the recognition and enforcement of

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.

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.

A foreign judgment shall be conclusive as to any matter thereby directly adjudicating upon between the same parties or between parties under whom they or any of them claim litigating under the same title (Section 13) and the court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

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.

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.

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.

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.

Section 10 of CPC provides that No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigation under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation:- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

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.