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COMPARATIVE NOTE ON TIME SPECIFICATION

drawn up by the Permanent Bureau

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ÉTUDE COMPARÉE SUR LA DÉTERMINATION DE L'ÉLÉMENT TEMPOREL

établie par le Bureau Permanent

For the attention of the Working Group on the Judgments Project

À l'attention du Groupe de travail relatif au projet sur les Jugements

At its fourth meeting, the Working Group requested the Permanent Bureau to conduct a comparative survey on time specification. To fulfill this mandate, this note compiles comparative materials pertaining to several legal systems around the world, including several regional and international instruments.¹

Specifically, this note is divided into two parts: Part A provides an analysis of the comparative materials, and recommendations as to how the Working Group can address the issue of temporal changes to the relevant connecting factors. Part B, then, provides a comparative table of the surveyed national systems, including English translations where necessary, and excerpts of Hague Conventions and other international instruments under review.

A. Analysis and recommendations

The Working Group may wish to consider whether the February 2015 Preliminary Draft Text² should be supplemented with specific rules that address issues which may arise due to the time lapse between the moment a legal dispute arises, and the moment when application for recognition or enforcement of the ensuing judgment is filed.

In its current wording, draft Article 5(3) a) and c) of the February 2015 Preliminary Draft Text, reads as follows:

Article 5

Refusal of recognition or enforcement

(...)

3. Recognition or enforcement of a judgment may also be refused if it does not comply with the requirements of any of the following provisions –

- a) the person against whom the judgment was rendered was a [habitual] resident of the State of the court of origin or the person that brought the claim on which the judgment is based; (...)
- c) the [defendant] [person against whom the judgment was rendered]³ maintained a branch, agency, or other establishment without separate legal personality in the State of the court of origin, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;

The residence or the habitual residence of the defendant may change over time. Further, it is also possible for the relevant branch, agency or establishment to transfer its activities to another jurisdiction, or even cease to exist. In those circumstances, the application of draft Article 5(3) a) and c) may give rise to uncertainties, since it does not address the issue of time specification. Before we consider how this issue can be addressed (below, III), we will summarise the main findings from our comparative survey.

¹ The Permanent Bureau wishes to thank all external experts for their contributions in compiling relevant materials. Special thanks go to Ms Yoonjong Kim, former Judge on secondment from Korea, and Ms Lena Minh Thi Võ, Intern, for their special role in the preparation of this note.

² The full titles of the February 2015 Preliminary Draft Text and other Conventions referred to in this Note are available in the Glossary of Commonly Used Terms and References, which is accessible via the Judgments Project Sharepoint site.

³ Hereafter, 'the defendant' refers to the person(s) against whom the judgment was rendered.

A. I. Surveyed legal systems

This note surveyed 39 legal systems: 26 national systems,⁴ and 13 international instruments consisting of 6 Hague Conventions⁵ and 7 other regional or international instruments.⁶

Because of the wide array of legal systems, we find variations in how jurisdictional factors are phrased in different legal systems. The time specification rules were examined in relation to these jurisdictional factors regardless of the different concepts that have been used in the text of the provisions, which include the defendant's "presence", "residence", "habitual residence" or "domicile".

Furthermore, specific time specification rules that relate to branch, agency, or other establishment in the sense of draft Article 5(3) c) of the future Judgments Convention were considered.

A. II. Time specification in surveyed national jurisdictions

Of the 26 national legal systems surveyed in this note, 19 jurisdictions establish the time criterion for the exercise of their direct or indirect jurisdiction over the parties expressly in their statutory regime or case law.⁷

Certain legal systems do not have express statutory provisions or case law which address the issue of time specification in the context of determining jurisdiction. However, some of these systems rely on doctrinal commentaries or on other relevant rules to address the issue instead. For example, the Russian Federation relies on doctrinal and practical commentaries to guide the interpretation of the relevant provisions in order to specify the decisive moment when the court's jurisdiction is invoked.⁸ In other national systems, it is generally accepted that the court maintains its jurisdiction after the decisive moment, even if the defendant changes his or her home basis thereafter.⁹ Alternatively, time specification rules that have been codified in other areas of law could be applied by analogy to the determination of jurisdiction, where the fact patterns are similar enough or where the court considers it to be appropriate in the circumstances.¹⁰

As such, most jurisdictions address the issue of time specification, either through express statutory provisions, case law, or otherwise.

⁴ Argentina, Australia, Brazil, Canada, People's Republic of China, Democratic Republic of Congo, Costa Rica, Gambia, Ghana, India, Germany, Japan, Kenya, The Republic of Korea, Mexico, New Zealand, Russian Federation, South Africa, Spain, Switzerland, Uganda, United Kingdom, United States of America and Zambia.

⁵ All surveyed Hague Conventions establish rules on recognition and enforcement of foreign judgments: Convention of 15 April 1958 concerning the Recognition and Enforcement of Decision related to Maintenances towards Children (1958 Hague Maintenance Convention), Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations (1970 Divorce Convention), the 1971 Enforcement Convention, Convention of 2 October 1973 on the Recognition and Enforcement of Decision relating Maintenance Obligations (1973 maintenance Applicable Law), the 1996 Children Protection Convention, and the 2007 Child Support Convention.

⁶ Brussels I *bis* Regulation, European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Montevideo Convention, Riyadh Arab Agreement, Buenos Aires Protocol, OHADA Uniform Act on Contracts for the Carriage of Goods by Road, and Trans-Tasman Court Proceedings and Regulatory Enforcement Agreement.

⁷ Australia, Canada (except in Quebec), China (Hong Kong), Congo, Gambia, Ghana, India, Germany, Japan, Kenya, Korea, Mexico, New Zealand, Singapore, South Africa, Spain, Uganda, UK, US.

⁸ "Commentary to the Civil Procedural Code Russian Federation" (2014), 2nd Edition, edited by Vicut M.A., Urait, 2014 p.42 <<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=CMB;n=17709>>

⁹ Argentina, Brazil, China (mainland), Costa Rica and Switzerland.

¹⁰ For example, Art. 3154 of the CCQ in Quebec adopts 'the date of institution of the proceedings' to determine one of the spouse's domicile in family law cases. In addition, Art. 9(2) of Swiss PILA, which refers to *lis pendens*, codifies time specification. These provisions are relevant factors in assessing the decisive moment when jurisdiction is established.

Despite the variations in formulation,¹¹ the prevailing standard used for determining the decisive moment is at the time of commencement of proceedings, both in codified provisions¹² and in case law.¹³

Commencement of proceedings can be defined in a number of ways; for example, six national systems specify 'when a lawsuit is filed',¹⁴ while other jurisdictions surveyed, including many African systems, consider 'when the writ or document instituting the proceeding is served on the defendant' as the critical moment that establishes jurisdiction. There are also instances where two different time specification rules are used within the same State. For example, while the Foreign Judgments Act (FJA) of Australia establishes indirect jurisdiction over the parties at the time of commencing proceedings,¹⁵ at common law, jurisdiction is established over the defendant at the time of service of the writ upon him or her.¹⁶

Finally, regarding specific rules relating to a branch, agency or other establishment, the key issue appears to be whether the court of origin requires the ongoing presence of a branch or other establishment from the time the claim is filed, and onwards throughout the proceedings. Most national systems establish specific rules in relation to a branch, agency or other establishment. However, few of those national systems have rules that provide a different time specification rule for such entities. Therefore, based on the surveyed comparative materials, no distinction needs to be drawn in respect of a time specification rule relating to a branch, agency or other establishment.

A. III. Time specification in international instruments

Most international instruments surveyed refer to the recognition and enforcement of foreign judgments, and also provide for time specification rules. However, as the impetus of these instruments are different and they serve distinct goals, the approach taken by each instrument varies.

First and foremost, all previous Hague Conventions relating to recognition and enforcement contain an express provision with regards to time specification. Furthermore, except for the 1958 Hague Maintenance Convention,¹⁷ all Hague Conventions since the 1970 Divorce Convention have consistently established the institution of proceedings as the relevant time criterion.¹⁸

By contrast, the approach to the time specification issue in other international instruments shows more variation.

On one hand, the La Paz Convention and the Riyadh Arab Agreement establish jurisdiction at the time when the proceedings are initiated. Specifically, the La Paz Convention articulates that indirect jurisdiction shall be determined 'at the time the action was initiated'¹⁹ and the Riyadh Arab Agreement employs the terminology of 'the time of hearing (opening the case)'.²⁰

¹¹ Variations are available, for instance: 'on the date of institution of the proceedings' (Quebec, Canada), 'Where the action was commenced' (Alberta, Canada) or 'once the proceedings have been initiated' (Spain).

¹² The Foreign Judgments Act 1991 (Cth) (Australia), the Court Jurisdiction and Proceedings Transfer Act (1994) (Canada (Uniform Law)), the Civil code of Quebec (Canada), the Code of Civil Procedure 1908 (India), the Judicature Act 1908 (New Zealand), the Proceedings Law (Spain), the Foreign Judgments Act 1933 (England and Wales).

¹³ Canada (Alberta), UK (England and Wales), US.

¹⁴ Canada (Ontario), Democratic Republic of Congo, Germany, Japan, Korea, Spain.

¹⁵ Under s 7(3)(a)(iv) of the FJA, the original court is taken to have had jurisdiction if the judgment debtor (defendant in the original court) resided in the country of that court at the time when the proceedings were instituted.

¹⁶ *Laurie v Carrol* (1958) CLR 310, 323.

¹⁷ The 1958 Hague Maintenance Convention refers to 'the time of filing a lawsuit' as the time criterion for the establishment of indirect jurisdiction (Art. 3).

¹⁸ Since the 1971 Enforcement Convention, the wording has changed into 'the time when proceedings were instituted'.

¹⁹ Art. 1.(A.1) of the Convention states that the requirement of jurisdiction in the international sphere is deemed to be satisfied, if, at the time the action was initiated, the defendant had his domicile or habitual residence in the territory of the State Party, in which the judgment was rendered.

²⁰ Under Art. 28(a) of the Agreement, the courts of the contracting party where the judgment was made, shall

The Brussels I *bis* Regulation does not specifically refer to a time factor in a separate provision. As commented by scholars, when determining the moment of having domicile in a Member State, the moment of instituting the proceedings is decisive.²¹

With regards to the rest of the surveyed bilateral or multilateral instruments, there appears to be no specific provision that provide for a time criterion in determining direct or indirect jurisdiction.

There are two possible explanations for the lack of time specification rules in several surveyed international instruments. First, only few controversies arise in relation to time specification when the court addressed recognises or enforces foreign judgments. Second, without the specification of the time criterion in an instrument, the determination of when jurisdiction is conferred on the court of origin is left to the discretion of the judge in the court addressed. In both instances therefore, time specification rules are not required.

In conclusion, although there is little uniformity in the international instruments surveyed in this paper, it is important to underscore that regarding the issue of time specification, the Hague Conventions under review have adopted a consistent approach.

A. IV. Recommendations to the Working Group

The Working Group may wish to address the issue of time specification in connection with the rules currently set out in draft Article 5(3) of the February 2015 Preliminary Draft Text.

The text as it stands does not provide for a specific time criterion.

On the basis of the surveyed comparative materials, the Working Group may consider the following recommendations.

First, the Working Group may contemplate to expressly address the issue of time specification. This approach is adopted by the majority of national systems, as well as all previously adopted Hague Conventions under review, where it is expressly stated when a court may assess its jurisdiction. In view of such precedents and taking the increasing mobility of persons into consideration, providing for time specification may be a valuable step to take in the further completion of the February 2015 Preliminary Draft Text.

There are a number of possible formulations to provide for time specification. For example, out of the 26 national systems surveyed, a fair number of national systems use the phrase 'when proceedings are instituted'. Other national systems, such as Germany, Japan and Korea, establish time criterion 'at the moment of filing a suit',²² whilst many African regimes and several common law systems under review rely on the phrase 'when the writ is served upon the defendant' to specify when a court has jurisdiction. In relation to the relevant Hague Conventions, the prevailing expression used is 'at the time when proceedings were instituted'.

be considered to have jurisdiction, if the domicile or place of residence of the defendant at the time of hearing (opening the case) was in the territory of the said contracting party.

²¹ See, with regard to the Brussels I Regulation, Magnus, Mankowski, Vlas, *Brussels I Regulation* (2nd ed, Sellier European Law Publishers 2012) p. 808; Kruger, *Civil jurisdiction rules of the EU and their impact on third States*, (Oxford University Press 2008), p. 72, para. 2.32.

²² In Brazil, although the Code of Civil Procedure does not specify a time criterion, it is interpreted that the jurisdiction of a court shall be established at the moment when a suit is filed.

In the event that the Working Group would wish to add an express time specification rule, the following phrase may be inserted into draft Article 5(3) a) and c):

Article 5

Refusal of recognition or enforcement

(...)

3. Recognition or enforcement of a judgment may also be refused if it does not comply with the requirements of any of the following provisions –

a) the person against whom the judgment was rendered was a [habitual] resident of the State of the court of origin **at the time proceedings were instituted** or the person that brought the claim on which the judgment is based; (...)

c) the [defendant] [person against whom the judgment was rendered] maintained a branch, agency, or other establishment without separate legal personality in the State of the court of origin **at the time proceedings were instituted**, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;

Alternatively, the Working Group may consider addressing the issue of time specification in the Explanatory Report instead. This approach of not expressly specifying a time specification rule has also been adopted by several national systems.

Lastly, the Working Group may conclude that the current absence of a time specification rule is adequate. Maintaining the status quo would enhance discretionary authority for the court addressed. However, given that this approach carries the risk of creating more legal uncertainty, it seems like the least attractive option, especially in light of the very consistent approach of the previous Hague Conventions that are under review.

B. Comparative table

I. National legal systems

	State/ Jurisdiction	Presence	Residence	Habitual Residence	Domicile	Branch, agency, other establishment
1	Argentina			<p>According to Section 2608 of the Civil and Commercial Code,²³ absent a special provision, personal actions must be brought under the jurisdiction of the court located in the place, where the defendant is domiciled or has his/her habitual residence.</p> <p>The jurisdiction of a court shall be determined at the time the lawsuit was filed.</p> <p>There is no specific provision, but it can be inferred.</p>	<p>According to Section 2608 of the Civil and Commercial Code, absent a special provision, personal actions must be brought under the jurisdiction of the court located in the place, where the defendant is domiciled or has his/her habitual residence.</p> <p>The jurisdiction of a court shall be determined at the time the lawsuit was filed.</p> <p>There is no specific provision but it can be inferred.</p>	<p>The new Argentina Civil and Commercial Code stipulates that a branch can be sued in the jurisdiction it is located in, if there is no choice of forum.</p> <p>There is no specific provision relating to time specification, thus the general inference can be applied.</p>

²³ Argentina adopted a new Civil and Commercial Code on 7 October 2014, which will enter into force on 1 January 2016.

2	Australia²⁴	At common law, jurisdiction is established over the defendant, if the defendant is present within the Court's territorial jurisdiction at the time of service of the writ upon him/her. ²⁵	According to Section 7 of the Foreign Judgments Act 1991 (Cth) (FJA), foreign courts are deemed to have jurisdiction, if the defendant resided in or had its principal place of business in that country at the time of commencement of the proceedings.			The legal personality of a company ²⁶ is first examined at the time of institution of proceedings (at the time of filing a suit). ²⁷ Under Australian legislation and at common law, the branch, agency or other establishment and the centre corporation are required to be present in the State of the court of origin at the time of institution of proceedings.
3	Brazil				Under the Code of Civil Procedure (CCP), the federal statute regulating judicial proceedings before federal and state courts nationwide, Brazilian judicial authorities have jurisdiction over parties based on the domicile of a	A court of Brazil has jurisdiction, if the defendant is domiciled in Brazil, i.e. if a foreign legal entity has a branch, agency or subsidiary located in the country.

²⁴ According to the Foreign Judgment Act 1991 (Cth), Australian courts recognize and enforce foreign judgments either under common law or under a statutory regime.

²⁵ *Laurie v Carroll* (1958) CLR 310 at [323].

²⁶ Presence is assessed differently for corporations, due to their lack of tangible presence in a forum. Australian law considers corporate presence under three factors; i) whether the corporation is carrying on business in the jurisdiction; ii) whether the corporation has a fixed address; iii) whether the corporation has conducted business for a sufficiently substantial amount of time; *National Commercial Bank v Wimbourne* (1979) 11 NSWLR 156, 165 (Holland J).

²⁷ *Lazard Brothers & Co v Midland Bank* (1933) AC 289 at pp. 306-307 (Lord Wright).

					defendant. ²⁸ It is generally assumed that the jurisdiction of a court shall be determined at the moment of filing a suit , even though the CCP does not specify. ²⁹	(no other special provision)
4	Canada (Uniform Law) ³⁰		The Uniform Enforcement of Foreign Judgment Act (2003) establishes jurisdiction of a court of origin in civil proceedings brought against a person, if he/she was ordinarily resident in that State {Article 8 (d)}. ³¹ According to the Court Jurisdiction and Proceedings Transfer Act (1994), a court has territorial competence in a proceeding that is brought against a person who is ordinarily resident in the [enacting province or territory] at the time of the			Pursuant to Article 8(e) of the Uniform Enforcement of Foreign Judgment Act, when the company was incorporated in the State of origin, and exercised its central management in that State or had its principal place of business located in that State, a court in the State of origin has jurisdiction. In addition, the Court Jurisdiction and Proceedings Transfer Act states that if a corporation has a place of business in the [enacting province or

²⁸ The CCP of Brazil was enacted in 1973 and Law No.13.105/2015 established a new CCP, effective as of 17 March 2016.

²⁹ Under both the current and the new CCP, there are no provisions that consider time specification as a factor of jurisdiction.

³⁰ This Uniform Law was drafted to bring the Canadian jurisdictional rules in line with the principles laid down by the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoya*. The Act has been incorporated in Saskatchewan, British Columbia, Nova Scotia and Quebec.

³¹ 'Ordinary Residence' means more than the mere fact of having a temporary place to live, and less than the legal concept of domicile, the Court concludes that this intermediate notion suggests some degree of permanency without the notion of exclusivity, which is proper to the concept of domicile; *M.(O.) v. K.(A.)*, 2000 CarswellQue 1709, 9 R.F.L. (5th) 111, [2000] R.J.Q. 2339, [2000] R.D.F. 761, [2000] REJB 2000-19964, J.E. 2000-1705

			commencement of the proceeding {Article 3 (d)}.			territory], the corporation is ordinarily resident in the [enacting province or territory] {Article 7 (c)}
	Canada (Ontario)		Pursuant to Rule 17.02 (p) of the Civil Procedure in Ontario, the Ontario Court has jurisdiction, where the proceeding is against a person who is ordinarily resident or carrying on a business in Ontario. Ontario Supreme Court (high Court of Justice) decided that the court has jurisdiction on 'the date of the issue of the writ' . ³²			The Ontario Court may enforce an action for breach of contract given by the court of another country, if the defendant was present there at the time of the action or has agreed to the foreign court's exercise of jurisdiction. ³³
	Canada (Quebec)		Article 3154 of the Civil Code of Quebec (CCQ) states that 'in other cases, Quebec authorities have jurisdiction if one of the spouses has his or her domicile or residence in Quebec on the date of institution of the		Article 3154 of the Civil Code of Quebec (CCQ) states that 'in other cases, Quebec authorities have jurisdiction if one of the spouses has his or her domicile or residence in Quebec on the date of institution of the	Under the CCQ, Quebec authorities have jurisdiction on a legal person, who is not domiciled, but has an establishment in Quebec and the dispute relates to its activities in Quebec {CCQ 3148 (2)}

³² *Finnerty v. Watson*, 1969 CarswellOnt 971, [1969] 1 O.R. 634

Furthermore, in family law cases, **the date of filing his/her bill of complaint** for divorce before the court shall be regarded as the time criterion for residence; *Powell v. Cockburn*, 1976 CarswellOnt 114, 22 R.F.L. 155, [1977] 2 S.C.R. 218, 8 N.R. 215, 68 D.L.R. (3d) 700

³³ *Arrowmaster Inc. V. Unique forming Ltd.*, 1993 CaswellOnt 505, 29 C.P.C. (3d) 65, 17 O.R. (3d) 407, 43 A.C.W.S. (3d) 1082, 4 W.D.C.P. (2d) 607

			proceedings’ . ³⁴ By analogy, the moment that determines the defendant’s residence might be the time of institution of the proceedings .		proceedings’ . By analogy, the moment that determines the defendant’s domicile might be the time of institution of the proceedings .	Regarding time specification, the same analogy with natural persons might be applied.
	Canada (Alberta)		For actions in <i>personam</i> , one of the five circumstances, in which the Alberta Court of the Queen’s Bench may enforce a foreign judgment, is where the defendant was a resident in the foreign country, where the action was commenced . ³⁵			Pursuant to <i>Eggleton v. Broadway Agencies Ltd.</i> , if the judgment debtor was no longer carrying on business in the place where the court of origin was located or was a resident in that place when the alleged breach was committed that gave rise to the cause of action , then the original court had no jurisdiction over the persons of the judgment debtors. ³⁶
5	People’s Republic of China (mainland)				Time specification is not explicitly provided for in the Civil Procedure Law (CPL) of the People’s Republic of China 2012. Article 37 of the Supreme People’s Court	There is no special jurisdictional rule for a branch, agency or other establishment. As the law that applies to natural persons is

³⁴ See *Doyle v. Doyle*, 1976 CarswellQue 39, [1997] 2 S.C.R. 198, 10 N.R. 250

³⁵ *Eggleton v. Broadway Agencies Ltd.* 1981 CarwellAlta 462, 32, A.R. 61

³⁶ *Ibid.* paras 27-28.

					<p>Interpretation on the Application of the Civil Procedure Law of the People’s Republic of China however states that after accepting the case, jurisdiction of the court will not be affected by the changes of the parties’ domicile or habitual residence. Although this provision does not specifically aim at setting a timeline for jurisdiction, it does give an indication of the moment in terms of changing jurisdiction. Thus, it can be deduced that the moment that determines the defendant’s domicile is the time when the court accepts the case.</p>	<p>applicable to legal persons as well (Article 3 of the CPL), the same time specification rule shall apply to an establishment.³⁷</p>
	<p>China (Hong Kong SAR)</p>	<p>Under common law, jurisdiction is established over the defendant if the defendant is present within the Court’s territorial jurisdiction at the time of service</p>				<p>If the defendant has a place of business within the court’s territorial jurisdiction, then jurisdiction exists once the writ is served on the</p>

³⁷ The People’s court of the place where the defendant has its domicile has jurisdiction to hear a civil lawsuit against a legal person or any other organization (Article 21 (2) of the CPL)

		of the writ upon him/her. ³⁸				defendant at its registered office. ³⁹
	China (Macau)		There are no specific provisions relating to time specification. However, the Civil Procedure Code of Macau (CPC) helps shed light on this subject: Article 418(1) (on <i>lis pendens</i>) states that the court that summons a defendant earlier will be considered as the court that exercises its jurisdiction earlier. It therefore appears that the defendant's summons determine the relevant time, at least for the purposes of parallel proceedings. ⁴⁰			The jurisdiction based on the venue of the defendant shall apply to both natural and legal persons. ⁴¹
6	Democratic Republic of Congo		Article 147(1) of the Code on the Organization, Functioning and Competence of the Judiciary states that Congolese courts have jurisdiction if the			The Congolese court located in the place of <u>the head office or a registered office</u> when the plaintiff files a suit, will have jurisdiction (Article 128 of the Code,

³⁸ *Ngan Chiu Yung v. Jean Frédéric Brion and Another* (2002) HCA 79/2002.

³⁹ *Re Yung Kee Holdings Ltd*, 2014 WL 6365 (CA), [2014] 2 HKLRD 313, [2014] HKEC 387 Para 91, 98.

⁴⁰ The courts of Macau will have jurisdiction where the defendant is domiciled or resides in the Macau SAR (CPC Arts 17 and 18). See <http://bo.io.gov.mo/bo/i/99/40/codprocivpt/indice.asp>

⁴¹ The courts of Macau will have jurisdiction where the defendant's office, agency, branch or delegation is located in Macau (CPC Art 17c).

			defendant has his/her residence in Congo when the plaintiff files a suit.			applied by analogy with Article 167 of the Congolese Family Code)
7	Costa Rica				<p>The Costa Rica Code of Civil Procedure (CCP) has no specific rules about time specification with regard to domicile.</p> <p>According to Article 629 of the CCP, the enforcement of a decision will be presented before the same tribunal that undertakes the process (first instance court), so experts assume that the Costa Rican courts maintain their jurisdiction after the proceedings were commenced.⁴²</p>	Article 46(4) of the CCP expressly indicates that a foreign company is presumed to be domiciled in Costa Rica in connection to all acts performed or contracts concluded by its branches, its subsidiaries or its agencies in Costa Rica. However, there is no provision for time specification.
8	Gambia	A Gambian court has jurisdiction in an action when the defendant is present in Gambia at the time of the service of the writ upon him or her. ⁴³				

⁴² See Juan José Obando Peralta, *Private International Law in Costa Rica* (Wolters Kluwer, 2013).

⁴³ *Solo Dabo v. Mohammed Abdalla Mousa* (1963-6) Gambia Law Reports 22. See R.F. Opong, *Private International Law in Commonwealth Africa* (Cambridge University Press, 2013) p. 47.

9	Ghana	If the defendant is present in Ghana at the time of the service of the writ upon him or her , no matter how briefly, the Ghanaian courts can assume jurisdiction over him or her. ⁴⁴				A company resident in Ghana at the time of the service of the writ is subject to the jurisdiction of the Ghanaian courts. Whether a company is resident in Ghana for the purposes of determining jurisdictional claims, is determined by the facts as they exist at the commencement of an action . ⁴⁵
10	India		Under Section 20 of the Code of Civil Procedure 1908 (CPC), all other suits ⁴⁶ are to be instituted in a court in the place, where the defendant actually and voluntarily resides, or carries on business, or personally works for gain at the time of commencement of the suit .			Pursuant to the CPC of India (Section 20 (a)), the branch, agency or other establishment is required to be present in the State of the court of origin at the time of commencement of the suit .

⁴⁴ *Tafa and Co. (Ghana) Ltd. V. Tafa and Co. Ltd* (1977) 1 Ghana Law Reports 422.

⁴⁵ *Ackerman v. Société Generale de Compensation* (1967) Ghana Law Reports 212 at 214.

⁴⁶ This includes all suits except for suits concerning property (regardless of immovable and movable property) and compensation for wrongs to persons or movables.

<p>11</p>	<p>Germany</p>		<p>The Code of Civil Procedure (CCP) of Germany enunciates that by the complaint being brought,⁴⁷ the dispute shall become pending. Once the dispute is pending, the jurisdiction of the court hearing the case will not be affected by any changes to the circumstances that gave rise to its competence {Section 261 (1) and (3) (ii)}.⁴⁸</p>			<p>According to Section 21(1) of the CCP of Germany, the court of the location at which the place of business is situated, shall have jurisdiction over all actions which related to the operation of the business.</p> <p>The time specification shall equally be applied to an establishment.</p>
<p>12</p>	<p>Japan</p>				<p>Under the Code of Civil Procedure (CCP) of Japan, an action shall be subject to the jurisdiction of the court that has jurisdiction over the location of the defendant and the general venue of a defendant shall be determined by his/her domicile (Article 4 (2)).⁴⁹</p> <p>Article 15 of the CCP codifies that the jurisdiction of a court shall be determined</p>	<p>Pursuant to Article 4 (5) of the CCP, the general venue of a foreign association or foundation shall be determined by its principal office or <u>business office in Japan</u>.</p> <p>A branch, agency or other establishment is required to be present in the State of the court of origin when an action is filed.</p>

⁴⁷ The complaint shall be brought by serving a written pleading (Statement of claim) {Section 253 (1)}.

⁴⁸ Under the CCP of Germany, the 'general venue' of a person is determined by his/her place of residence (Section 12, 13).

⁴⁹ The general venue of a person shall be determined by his/her domicile, by his/her residence if he/she has no domicile in Japan or his/her domicile is unknown, or by his/her last domicile if he/she has no residence in Japan or his/her residence is unknown.

					on the basis of the time of the filing of an action.	
13	Kenya	The presence of the defendant in Kenya at the time of the service of the writ upon him or her confers jurisdiction on its courts. ⁵⁰				
14	Republic of Korea				Under the Civil Procedure Acts of Korea (CPA), the general forum of a person shall be determined by his/her domicile (Article 3). ⁵¹ Article 33 of the CPA stipulates that the jurisdiction of a court shall be established when a lawsuit had been filed.	Article 12 of the CPA codifies a special forum of location of <u>office or business place.</u> The time specification is identical. As a result, a branch, agency or other establishment is required to be present in the State of the court of origin when a plaintiff files a suit.

⁵⁰ It was considered that service of a writ on a defendant at the Eastleigh Airport, Nairobi constituted proper service, while the defendant was in transit through Kenya; *Riddelsbarger v. Robinson* (1958) East Africa Law Reports 375.

⁵¹ If the person has no domicile in the Republic of Korea or his/her domicile is unknown, it shall be determined pursuant to his/her residence.

15	Mexico				<p>Pursuant to the Federal Code of Civil Procedure (FCCP),⁵² the court located in the place where the defendant is domiciled shall have jurisdiction to rule on actions <i>in personam</i> (Article 24 IV) and as a general rule, changes of fact occurred after the defendant has been served do not have an impact on the grounds of jurisdiction (Article 12 of the FCCP).⁵³</p>	<p>Pursuant to the Federal Civil Code (FCC) and the Mexican Commercial Code, branches operating in places different from that where the home office is established, shall have their domicile in those places for compliance with the obligations contracted by such branches (Article 15, 1104 of the Commercial Code, Article 33 of the FCC).</p> <p>However, with regard to changes in domicile and the impact on the grounds of jurisdiction, the same Mexican rules shall be applied.</p>
16	New Zealand	<p>New Zealand law and its courts possess basic jurisdiction only if the defendant is present in New Zealand at the time the proceedings</p>	<p>For the purpose of determining indirect jurisdiction, the foreign courts are deemed to have jurisdiction, if the defendant resided in (or, possibly, at common law,</p>			<p>Similar rules for legal persons . However, “presence” and “residence” of legal persons have been</p>

⁵² Mexico has 32 states (*entidades federativas*), and each state has enacted its own Civil Code and Procedural Code. The provisions on jurisdiction in Mexico are dispersed throughout all those codes. The Federal Code of Civil Procedure (FCCP) largely reflects the jurisdictional grounds for all international cases in Mexico.

⁵³ If the proceedings have been initiated (the initiating document has been filed in the court registry), but the defendant has not yet been served and he changes domicile, then the court would not be competent to hear the claim and the plaintiff is required to file papers at the court where the defendant is not domiciled.

		are served on the defendant.	merely present) in that country at the time the proceedings are instituted. In this context, “instituted” means served on the defendant. ⁵⁴			adapted through case law.
17	Russian Federation		Under the Civil Procedure Code (CPC) of Russia, a claim shall be instituted in the court at the place of residence of the defendant (Article 28). The CPC does not specify time criteria, but Article 33 of the CPC indicates that even if the place of business or residence of a defendant changes after the moment when the suit has been already filed , the court, to which the case was brought first, would not be deprived of its jurisdiction.			Pursuant to the CPC, a claim against an organisation resulting from the activity of its affiliate or representation may also be instituted in court at the place of location of its affiliate or representation. As to the time specification, Article 33 shall be applied, thus the existence of establishment is required at the time of filing a suit.

⁵⁴ Under the Reciprocal Enforcement of Judgments Act 1934. Specifically with regard to Australian judgments that are enforceable in New Zealand under the Trans-Tasman enforcement regime, there is no jurisdiction requirement at all.

18	Singapore	As per section 16 (1) of the Supreme Court of Judicature Act (SCJA), the Singapore court has jurisdiction over a defendant who is served with the originating process whilst present in Singapore.				Section 17 of the SCJA extends jurisdiction over matters related to companies. No special provisions regarding branches, agencies or establishments are in place.
19	South Africa ⁵⁵		Under Section 28 of the Magistrates Court Act 32 of 1994 (see also Section 59 of the Supreme Court Act of 1959), as to action in <i>personam</i> , the court shall have jurisdiction where the domicile or residence of the defendant is located at the time of the service of the summons upon him or her.		Under Section 28 of the Magistrates Court Act 32 of 1994 (see also Section 59 of the Supreme Court Act of 1959), as to action in <i>personam</i> , the court shall have jurisdiction where the domicile or residence of the defendant is located at the time of the service of the summons upon him or her. ⁵⁶	If a foreign Corporation does not have its principal place of business in South Africa, but does certain business there, such residence will only be recognised in regard to a dispute which turns upon a cause of action arising out of the local business activities. ⁵⁷
20	Spain			For the purposes of determining jurisdiction, Article 22 (3) of the Law on Court Administration (<i>Ley</i>		For the purposes of determining jurisdiction, Article 22 (3) of the Law on Court Administration

⁵⁵ Under the South African legal regime, **the doctrine of effectiveness** is the basis for the assumption of jurisdiction. On the basis of this principle, different rules of jurisdiction apply depending on the nature of the proceedings and the nature of the relief claimed.

⁵⁶ Under the Act, "civil summons" means any summons whereby civil proceedings are commenced, and includes any rule *nisi*, notice of motion or petition the object of which is to require the appearance before the court out of which it is issued of any person against whom relief is sought in such proceedings or of any person who is interested in resisting the granting of such relief.

⁵⁷ *ISM Inter Ltd v. Maraldo and Another* 1983 (4) South Africa Law Reports 112 (T) at 117B.

				<p><i>Orgánica del Poder Judicial</i>) refers to the defendants' habitual residence for natural persons. Article 411 of the Spanish Civil Proceedings Law (CPL, <i>Ley de Enjuiciamiento Civil</i>) states that "once the proceedings have been initiated, among other, the change of the parties' domiciles shall not lead to a change in jurisdiction".⁵⁸</p>		<p>(<i>Ley Orgánica del Poder Judicial</i>) refers to the seat of legal persons ("su sede social, su centro de administración o administración central o su centro de actividad principal.")</p>
21	Switzerland				<p>According to the Swiss Private International Law of 18 December 1987, the Swiss judicial or administrative authorities of the defendant's domicile have jurisdiction unless specific provisions of this Act provide otherwise.^{59, 60}</p> <p>There is no specific rule of time specification with</p>	<p>There are no special or exceptional rules for branch, agency or other establishments.</p> <p>Accordingly, a branch, agency or other establishment is required to have their domicile in the State of the court of origin when the proceeding is initiated.⁶²</p>

⁵⁸ Article 411 of the Spanish Civil Proceedings Law codifies the principle of "perpetuation of jurisdiction".

⁵⁹ This is a subsidiary rule, which in effect provides a 'standard criterion' for the jurisdiction of the Swiss courts. In addition, for example, in matters relating to the law of obligations, 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 (Art 112 (1) of the Swiss Private International Law Act).

⁶⁰ Art. 20 (1) (a) of the Swiss Private International Law Act defines the domicile as the place in the State where the defendant resides with the intent of establishing permanent residence.

⁶² Art. 21 of the Swiss PILA provides the definition of the domicile of a company. First of all, the registered office is deemed to be the domicile and a registered office of a

					regard to the domicile, however it is generally accepted that the criterion of determining domicile is the time when the proceeding is initiated. ⁶¹	
22	Uganda	Presence of the defendant in Uganda is required at the time of the service of the writ upon him or her for the court to establish its jurisdiction. ⁶³				Residence of the company in Uganda is required at the time of the service of the writ for the court to establish its jurisdiction. ⁶⁴
23	United Kingdom (England and Wales)	Under the Civil Procedure rules (CPR) of England and Wales, the English court has jurisdiction over the defendant, if he/she is physically within England or Wales and is validly served with process. ⁶⁵	The Foreign Judgments (Reciprocal Enforcement) Act 1933 ⁶⁶ establishes that the jurisdiction of the original court shall be determined on the standard of the time, when the proceedings were instituted (the Section 4 (2) (iv)).			Under the CPR, the English court has jurisdiction over the branch, agency or other establishment located within England and Wales (CCP Article 6.9). [no specific provision on time specification]

company is deemed to be located at the place designated in the articles of incorporation or in the articles of association. Failing such a designation, the registered office is located at the place where the company is in fact managed. Furthermore, a place of business of a company is located in the State where its registered office is located or in any State where one of its branches is located.

⁶¹ The assertion may be interpreted by analogy with Art 9 (2) of the Swiss Private International Law Act, which states that in order to determine when an action has been initiated in Switzerland, the conclusive date is that of the first act that is necessary to initiate the proceeding.

⁶³ *Eastern and Southern African Trade and Development Bank v. Hasan Basajjalaba*, HCT-OO-CC-CS0512-2006 (High Court of Uganda, 2007). See R.F. Opong, *Private International Law in Commonwealth Africa* (Cambridge University Press, 2013) p. 62.

⁶⁴ *Wrigglesworth Clearing Ltd v. Trago (U) Ltd* (1999) Kampala Law Reports 758.

⁶⁵ *Maharane of Baroda v. Wildenstein* [1972] 2 OB 283.

⁶⁶ The 1933 Act applies to countries within the Commonwealth, such as Australia, Canada, Guernsey and India. However, the Administration of Justice Act 1920 allows foreign judgments to be enforced in the UK, which are obtained in the court of other Commonwealth countries, including New Zealand, Singapore, Seychelles, Kenya, the Cayman

	United Kingdom (Scotland)				<p>There is no time specification in the relevant Scottish statutory provision.</p> <p>However, according to Scottish case law, the crucial time for determining whether someone is domiciled in Scotland is the date “when the action was raised”.⁶⁷</p>	<p>Even though there is no direct Scottish statutory provision, it might be said that jurisdiction is established on the basis of the pleadings in the case at the time the action is raised (provided the dispute arises out of the operations of the branch, agency or establishment).⁶⁸</p>
24	United States of America	<p>According to rule 3 of the Federal Rules of Civil Procedure, which provides the rule of federal practice, the filing of the complaint marks the commencement of the action.⁶⁹ Generally jurisdiction of the court over the cause depends on the state</p>				<p>General jurisdiction exists where the entity is “at home”, <i>i.e.</i>, where it is incorporated or maintains its principal place of business.⁷¹ Specific jurisdiction exists where the cause of action arises out of the defendant’s state-connected activity.⁷² Jurisdiction in the court exists, when the activities of the corporation have</p>

Islands, the British Virgin Islands and Zimbabwe.

⁶⁷ *Stewart v Trafalgar House Steamship Co Ltd*, 2013 SLT 834, [20] per Lord Uist (a Schedule 4 to the 1982 Act case).

⁶⁸ *Ibid.*

⁶⁹ The term “commenced” in Rule 3 indicates the earliest point of time in which a claim may be considered in litigations. While service of process or appearance in lieu of process is generally a prerequisite to the acquisition of jurisdiction over the person or *res* involved, under Rule 3, upon the filing of a complaint, the action is duly commenced and pending and the court acquires jurisdiction even though a summons has not been issued or served; 3 Cyc. Of Federal proc. § 10:9 (3d ed.), p. 1.

⁷¹ *Daimler AG v. Bauman* 134 S.Ct. (2014) at [760].

⁷² *Burger King Corp. v. Rudzewicz*, 1985, 471 U.S. 462, 472-73 & n.15, 105 S.Ct. 2174, 2182, 85 L.Ed. 528, 541.

		of facts at the time the action is brought. ⁷⁰				been continuous and give rise to the liabilities sued on. ⁷³
	United States of America (California)	Under the section 410.10 of the Code of Civil Procedure (CCP), ⁷⁴ a State can exercise jurisdiction over an individual who is physically present within its territory, regardless of whether permanently or temporarily, at the time of service of the summon. ⁷⁵			Person domiciled in California when the lawsuit is commenced are subject to personal jurisdiction. ⁷⁶	Courts may exercise their jurisdiction over a non-resident individual, who has done business in the State, if the cause of action arose from the business, even if he has ceased to do business there at the time when the action is commenced. ⁷⁷

⁷⁰ Personal jurisdiction in the federal court is governed by rule of the FRCP. The Court’s authority allows it to reach all residents of a State, including those who are outside the State for a short period and out-of State residents who enter the State even briefly. “Jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system”. See *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 619 (1990).

⁷³ *Connecticut Mutual Co. v. Spratley.*, 172 U. S. 602, 610-611.

⁷⁴ Section 410. 10 permits California courts to exercise judicial jurisdiction on any basis not inconsistent with the state or federal constitutions. This authorization continues the California law on jurisdiction over foreign corporations and reestablishes the prior law that once governed non-resident individuals. A state has power to exercise judicial jurisdiction over an individual on one or more of the following bases: (1) Presence, (2) Domicile, (3) Residence, (4) Nationality or citizenship, (5) Consent, (6) Appearance in an action, (7) Doing business in the state, (8) An act done in the state, (9) Causing an effect in the state by an act done elsewhere, (10) Ownership, use or possession of a thing in the state, (11) Other relationship to the state which make the exercise of judicial jurisdiction reasonable. However, one’s ‘residence’ or even ‘habitual residence’ in California does not automatically confer personal jurisdiction over a defendant; *DeYoung v. DeYoung*, 27 Cal. 2d 521, 524 (1946), *Marriage of Tucker*, 226 Cal. App. 3d 1249 (1991).

⁷⁵ *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878); *Burnham v. Sup. Ct.*, 495 U.S. 604 (1990).

⁷⁶ *Milliken v. Meyer*, 311 U. S. 457, 462 (1940). ‘Domicile’ is the place where one resides with the intent to remain indefinitely. People can have several residences concurrently, but because of the intent requirement, they can only have one domicile at a time; *Marriage of Tucker*, 226 Cal. App. 3d 1249 (1991).

⁷⁷ *McGee v. International Life Ins. Co.* (1958) 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223; *Lewis Mfg. Co. v. Superior Court* (1956) 140 Cal.App.2d 245, 255, 295 P.2d 145; 10 A.L.R.2d 200.

Note is taken that the State’s power to exercise judicial jurisdiction stretches out to a non-resident corporation that was a party to a contract with a resident of the State, even if the non-resident corporation never had any agent or office in the State.

	United States of America (New York)	Section 301 of the New York Civil Practice Law and Rules (CPLR) states that service while a person is physically within the State is sufficient to confer general jurisdiction on New York courts. ⁷⁸			A defendant who is a New York domiciliary at the time action is commenced may be served with process anywhere (either within or outside New York), thereby conferring general in personam jurisdiction under CPLR 301. ⁷⁹	General jurisdiction exists where the entity is “at home”, i.e. where it is incorporated or maintains its principal place of business. ⁸⁰ Specific jurisdiction exists where the cause of action arises out of the defendant’s state-connected activity. ⁸¹
25	Zambia		Jurisdiction of the Zambian courts exists, if the defendant is resident in Zambia at the time of the service of the writ. ⁸²			

⁷⁸ *Rawstorne v. Maguire*, 265 N.Y. 204, 207, 192 N.E. 294, 295 (1924).

⁷⁹ *Ibid.*

⁸⁰ *Daimler AG v. Bauman* 134 S.Ct.(2014) at [760].

⁸¹ *Burger King Corp. v. Rudzewicz*, 1985, 471 U.S. 462, 472-73 & n.15, 105 S.Ct. 2174, 2182, 85 L.Ed. 528, 541.

⁸² According to the High Court Rules, ord. VI, r. 1(1), except for petitions under the Constitution and Matrimonial Causes Acts and applications for writs of *habeas corpus*, every action in the Court shall, notwithstanding the provisions of any other written law, be commenced by a writ of summons endorsed with or accompanied by a full statement of claim.

II. Multilateral legal systems

1. Previous Hague Conventions

	Previous Hague Conventions	Time Specification for Connecting Factors			
		Presence	Residence	Habitual Residence	Domicile
1	Convention concerning the Recognition and Enforcement of Decision related to Maintenances towards Children (15 April 1958) ⁸³			Article 3 of the Convention codified time specification by stating that the jurisdiction of a court shall be determined on the standard of the time when a lawsuit had been filed , provided that the maintenance debtor or creditor had his habitual residence in that State.	
2	Convention on the Recognition of Divorces and Legal Separations (1 June 1970)			Article 2 of the Convention establishes that the recognition of divorces and legal separations in other Contracting States shall be determined on the standard of the date of institution of the proceedings , if the petitioner or the respondent had his habitual residence in the State of origin. ⁸⁴	

⁸³ This Convention was drawn up in French only.

⁸⁴ As for the petitioner, he or she shall fulfil one of the following further conditions: a) such habitual residence had continued for not less than one year immediately prior to the institution of proceedings; or b) the spouse's last habitual residence was the same as his or her spouse, *i.e.*, both spouses lived together.

3	<p>Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters</p> <p>(1 February 1971)</p>			<p>Under the Article 10(1) of the Convention, the court of the State of origin shall have jurisdiction if the defendant had, at the time when the proceedings were instituted, his habitual residence in that State of origin, or, if the defendant is not a natural person, its seat, its place of incorporation or its principal place of business in that State.⁸⁵</p>	
4	<p>Convention on the Recognition and Enforcement of Decisions Relating Maintenance Obligations</p> <p>(2 October 1973)</p>			<p>Article 7(1) of the Convention establishes that the jurisdiction of an authority of a State of origin shall be determined on the standard of the time when proceedings were instituted, if either the maintenance debtor or the maintenance creditor had his habitual residence in that State.⁸⁶</p>	
5	<p>Convention on Jurisdiction,</p>			<p>Article 25 establishes that the authority of the</p>	

⁸⁵ The Convention has a very strict regime regarding the service of the writ upon the defendant. Consequently, a default decision will be recognised or enforced only if the document instituting the proceedings was notified and served upon the defaulting party according to the law of the State of origin; Ch.N. Fragistas & G. Droz, "Explanatory Report on the 1971 Hague Judgments Convention", (HCCH publication, 1969), p. 383.

⁸⁶ According to the Explanatory Report by M. Verwilghen, jurisdiction based on the habitual residence of the maintenance shall be not only the venue of the debtor, but also that of the creditor, who is considered to be the weaker party. Furthermore, the concept of 'habitual residence' should be used rather than 'domicile' in order to avoid the well-known difficulties to which this latter word gives rise: e.g. meaning varying from country to country, problems raised by the domicile of dependence and by the domicile of origin (paras 51, 52).

	<p>Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children</p> <p>(19 October 1996)</p>			<p>requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction</p>	
6	<p>Convention on the International Recovery of Child Support and Other Forms of Family Maintenance</p> <p>(23 November 2007)</p>			<p>Article 20(1) establishes that a decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States, if a) the respondent was habitually resident in the State of origin at the time proceedings were instituted; or c) the creditor was habitually resident in the State of origin at the time proceedings were instituted; or d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has</p>	

				resided in that State and provided support for the child there.	
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2. Other International Instruments

	International Instruments	Time Specification				
		Presence	Residence	Habitual Residence	Domicile	Branch, agency, other establishment
1	Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters				Subject to the Brussels I <i>bis</i> Regulation, the Court of the Member State where the defendant has his/her domicile, has general jurisdiction over the parties (Art 4(1)). ⁸⁷ Jurisdiction is established at the moment when proceedings are initiated . ⁸⁸	The Brussels I <i>bis</i> Regulation establishes special jurisdiction for courts where the branch, agency or other establishment is situated. Courts have jurisdiction with regard to a dispute arising out of the operation of such a branch, etc. (Art7(5)). ⁸⁹ According to doctrinal commentaries, the branch agency or other establishment must still exist at the time when the writ is

⁸⁷ Furthermore, in order to determine whether a party is domiciled in the Member State whose courts are seized of a matter, the court shall apply its internal law {Art 62(1)}.

⁸⁸ The Court of Justice of the European Union (CJEU) has not taken an express stand on this subject, but in several instances has considered the question of the time, at which the preconditions for jurisdiction in the European judicial area must be found, ruling that this must be "only at the time that a claim in court is submitted, thus initiating the action". See, for instance, *Sanicentral GmbH v. Rene Collin*, (Case 25/79) (1979), ECR 3423.

⁸⁹ Art 63 gives an autonomous definition regarding the domicile of a company or other legal person or association that is a natural or legal person. According to this article, a company or legal person is domiciled at the place where it has its statutory seat, its central administration or its principal place of business.

						issued and the lawsuit becomes pending. ⁹⁰
2	<p>European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children</p> <p>(20 May 1980)</p>			<p>Article 8(1.a) of the Convention establishes that in the case of an improper removal, the central authority of the State addressed shall cause steps to be taken forthwith to restore the custody of the child where:</p> <p>at the time of the institution of the proceedings in the State where the decision was given or at the time of the improper removal, if earlier, the child and his parents had as their sole nationality the nationality of that State and the child had his habitual residence in the territory of that State,(...).</p>		

⁹⁰ Magnus, U. and Mankowski, P., European Commentaries on Private International Law, Brussels I Regulation, 2nd Revised Edition, Munich, Sellier, 2012, para 301, p. 287.

3	<p>Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments</p> <p>(24 May 1984)</p>			<p>For the purpose of the extraterritorial validity of foreign judgments, Article 1 (A.1) of the Convention establishes that</p> <p>at the time the action was initiated, the defendant, if a natural person, has his domicile or habitual residence in the territory of the State Party in which judgment was rendered, the requirement of jurisdiction in the international sphere is deemed to be satisfied.</p>	<p>For the purpose of the extraterritorial validity of foreign judgments, Article 1 (A.1) of the Convention establishes that</p> <p>at the time the action was initiated, the defendant, if a natural person, has his domicile or habitual residence in the territory of the State Party in which judgment was rendered, the requirement of jurisdiction in the international sphere is deemed to be satisfied.</p>	<p>Article 1 (A.3) states that in an action against a branch, agency, or affiliate of a private non-commercial or business enterprise, the activities that gave rise to such action took place in the State party in which judgment was rendered, the requirement of jurisdiction in the international sphere is deemed to be satisfied.</p>
4	<p>Riyadh Arab Agreement of 6 April 1983 for Judicial Cooperation</p>		<p>Subject to Article 28 (a), the courts of the contracting party where the judgment was made shall be considered to have jurisdiction, if the domicile or place of residence of the defendant at the time of hearing (opening the case) was in the</p>	.	<p>Subject to Article 28 (a), the courts of the contracting party where the judgment was made shall be considered to have jurisdiction, if the domicile or place of residence of the defendant at the time of hearing (opening the case) was in the</p>	<p>The Agreement confers (indirect) jurisdiction on the contracting party, if the defendant had at the time of hearing (opening the case) a place or branch of business or industry or any other such activity in the territory of the said contracting party,</p>

			territory of the said contracting party.		territory of the said contracting party.	and the action instituted against him pertained to a dispute concerning the activities undertaken in such place or branch {Art 28 (b)}.
5	Buenos Aires Protocol of 5 August 1994 on International Jurisdiction in Contractual Matters, MERCOSUR/CMC/DEC. No 01/94:				Under this Protocol, the judges of the respondent's domicile may have jurisdiction in the absence of an agreement (Art 7 a.). ⁹¹ However there is no provision which specifies time criterion conferring jurisdiction.	If the juridical person has branches, establishments, agencies, or any kind of representation, it shall be considered domiciled in the location where it operates and is subject to the jurisdiction of local authorities, in matters concerning the operations conducted there. (Art 9. B). ⁹²

⁹¹ Pursuant to the Protocol, the domicile of the respondent shall be interpreted as their usual residence, subsidiary, the principal centre of their business and in the absence of these circumstances, the location of the simple residence (Art 9.a).

⁹² This description is not an obstacle to the plaintiff's right to file suit in the courts where its principal administrative headquarters are located.

6	<p>OHADA Uniform Act on Contracts for the Carriage of Goods by Road</p> <p>(22 March 2003)</p>			<p>For any dispute which arises from interstate transportation pursuant to this Uniform Act, if the parties did not attribute competence to arbitration or State court, the applicant may start litigation before the courts of the country in whose territory the defendant has his habitual residence {Art 27. 1.a}).</p>		<p>If the parties did not attribute competence to arbitration or a State court, the courts of the country in whose territory the defendant has his headquarters or branch or agency through which the transportation contract was concluded may have jurisdiction over the parties {Article 27.1. a}).</p>
7	<p>Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman court Proceedings and Regulatory Enforcement⁹³</p> <p>(11 October 2013)</p>	<p>Pursuant to Article 5(8) (Recognition and Enforcement of Judgment) of the Treaty, the registering court may set aside (i) judgments given in an action where the subject matter is <u>immovable property</u> and (ii) the judgments in</p>				

⁹³ Australia and New Zealand introduced a regime to streamline the processes for managing and resolving civil and criminal proceedings, where elements of the proceedings span both countries. The aim of this regime is to reduce the costs associated with litigation, improve efficiency and minimise the existing barriers to enforcing judgments and regulatory sanctions between the two countries.

		<p>an action in rem where the subject matter is <u>movable property</u>, if the property in question was not situated within the territory of the Party in which the court which issued the judgment is located at the time of the proceedings before the court which issued the judgment.⁹⁴</p>				
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⁹⁴ The Treaty has no specific provision related to (indirect) jurisdiction based on the status of a defendant, except one of the grounds for declining jurisdiction (Art. 8(2) a), which mentions 'where the parties live' as connecting factor of a more appropriate forum for the proceedings.