

**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.

The 2008 Agreement between New Zealand and Australia on Trans-Tasman Court Proceedings and Regulatory Enforcement which will enter into force shortly. There are also some old Conventions entered into by the United Kingdom that apply in New Zealand that may touch on the recognition and enforcement of judgments.

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.

Trans-Tasman Proceedings Act 2010 (in relation to Australia)

The Reciprocal Enforcement of Judgments Act 1934 (in relation to specified countries) and common law. In addition, there are some specific statutory schemes for particular kinds of judgments. An example is Part 5 of the Securities Act 1978.

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

Please specify.

In relation to Australia, the High Court of New Zealand or any other court that could have granted the relief in the judgment. For all other foreign judgments, the High Court of New Zealand.

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)?

In relation to Australia under the Trans-Tasman Proceedings Act, the judgment must be final and conclusive, and given in a civil proceeding.

There are some exclusions:

- a judgment that relates to an excluded matter (currently this applies to certain family law matters such as dissolution of marriage or maintenance orders, and certain cross-border insolvency judgments)
- orders granting probate or letters of administration

- orders relating to the care, control, or welfare of a child
- orders relating to the guardianship or care of a person who is incapable of managing their personal affairs
- orders relating to the management of the property of a person who is incapable of managing that property

The option to exclude certain non-money judgments by Order in Council also exists. None will be excluded at the commencement of the Act. There is also provision for specified regulatory regime criminal fines to be enforced in the same way as a civil judgment debt.

To be registered (and enforceable) under the Reciprocal Enforcement of Judgments Act 1934, the judgment:

- must be a final and conclusive money judgment given by a superior court of a country to which the Act extends
- must also not be in the nature of a tax or a penalty
- must be capable of enforcement in the country in which it was given
- must not have been wholly satisfied.

A foreign judgment will be enforced in New Zealand at common law if:

- the jurisdiction of the court to give the judgment is recognised by New Zealand law (eg, the judgment debtor was present in the country at the time the proceedings were started, the judgment debtor submitted to the jurisdiction by voluntarily appearing)
- the judgment is for a debt or definite sum of money
- the judgment is not for a tax or penalty
- the judgment is final and conclusive.

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?

Under the Trans-Tasman Proceedings Act, the only ground for refusing to enforce an Australian judgment is that it would be contrary to the public policy of New Zealand. Enforcement can also be refused if the judgment was given in a proceeding concerning immovable property or in a proceeding in rem concerning moveable property, if the property, at the time of the proceeding, was not situated in Australia.

Under the Reciprocal Enforcement of Judgments Act, enforcement can be refused if :

- the courts in the country of the original court had no jurisdiction as prescribed (eg the judgment debtor, being the defendant, did not submit to the jurisdiction of the court by voluntarily appearing, or being resident in the country of the original court)
- the judgment debtor, being the defendant, did not receive adequate notice of the proceedings
- the judgment was obtained by fraud
- enforcement of the judgment would be contrary to public policy in New Zealand

At common law, the defences to enforcement of a foreign judgment are:

- the judgment was obtained by fraud

- enforcement would be contrary to New Zealand public policy
- the proceedings in the foreign court breached natural justice

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.

Under the Trans-Tasman Proceedings Act, there is a registration process undertaken by the Registrar of the court. Under the Reciprocal Enforcement of Judgments Act, there is a registration process set out in the Act. At common law, enforcement is by way of an action on the foreign judgment.

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

Judgments entered in default

Comments.

Under the Trans-Tasman Proceedings Act, default judgments will be enforceable. A default judgment will not be enforceable under the Reciprocal Enforcement of Judgments Act or at common law if the court lacked jurisdiction (see above).

Provisional and protective measures

Comments.

Under the Trans-Tasman Proceedings Act, the New Zealand High Court and the District Courts have the power to grant interim relief in support of an Australian proceeding. The New Zealand High Court also has power under its Rules to grant relief in support of foreign proceedings.

Non-money judgments

Comments.

Australian non-money judgments are enforceable under the Trans-Tasman Proceedings Act (see above). It is possible to extend the application of the Reciprocal Enforcement of Judgments Act to non-money judgments but this power has not been used to date.

Judgments awarding non-compensatory damages

Comments.

It may be possible to enforce such a judgment under the Trans-Tasman Proceedings Act. However, any judgment in the nature of a penalty is not enforceable under the Reciprocal Enforcement of Judgments Act or at common law.

Other.

If other, please specify.

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

- YES
 NO

If yes, under what circumstances.

Actions to enforce a foreign judgment at common law would be subject to the normal appeal process. Trans-Tasman Proceedings Act registrations are undertaken by the Court Registrar. Applications to review the Registrar's decisions will be possible. Decisions of the High Court under the Reciprocal Enforcement of Judgments Act would be subject to the general right of appeal to the Court of Appeal.

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.

IT HAS NOT BEEN POSSIBLE TO OBTAIN FIGURES ABOUT REGISTRATIONS UNDER THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT IN THE TIME AVAILABLE. THE TRANS-TASMAN PROCEEDINGS ACT IS NOT YET IN FORCE, ALTHOUGH IT WILL BE IN FORCE SHORTLY. IT WOULD BE DIFFICULT TO OBTAIN FIGURES ABOUT ENFORCEMENT AT COMMON LAW.

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

- 0-5
 5-10
 10 - 20
 more than 20.

Any comments.

IT HAS NOT BEEN POSSIBLE TO OBTAIN FIGURES ABOUT REGISTRATIONS UNDER THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT IN THE TIME AVAILABLE. THE TRANS-TASMAN PROCEEDINGS ACT IS NOT YET IN FORCE, ALTHOUGH IT WILL BE IN FORCE SHORTLY. IT WOULD BE DIFFICULT TO OBTAIN FIGURES ABOUT ENFORCEMENT AT COMMON LAW.

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.

The Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement modifies the normal rules by allowing initiating process in a

civil proceeding before a court in one country to be served in the other without requiring leave or a connection between the proceedings and the country of issue. Any resulting judgment can be enforced.

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.

The High Court Rules (Schedule 2 of the Judicature Act 1908) is the primary source of the rules of general application in relation to service of proceedings out of New Zealand (jurisdiction depends on valid service on the defendant). In addition to the Trans-Tasman Proceedings Act, there are other statutes with specific rules.

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

YES

NO

Comments

The relevant High Court Rules were reviewed by the Rules Committee. Revised rules were included in the new High Court Rules that came into force on 1 February 2009.

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

The Companies Act 1993 sets out the methods for valid service on New Zealand overseas companies. There are also specific High Court Rules dealing with service on an overseas corporation (other than an overseas company) and on partnerships.

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

In New Zealand, individuals cannot generally sue for personal injury occurring here as this is covered by our Accident Compensation scheme.

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

Other grounds where service is allowed without leave are set out in Rule 6.27 of the High Court Rules and grounds where service is allowed with leave are set out in Rule 6.28 of the High Court Rules.

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.

The answer is yes to the extent that this means that service on a defendant out of New Zealand is not valid.

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.

The test applied in New Zealand is whether there is another forum which is more appropriate. The New Zealand courts are guided by the decision of the House of Lords in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460. The factors considered in the *Spiliada* test include, among other things, the existence of litigation in another jurisdiction. In relation to Australia, the Trans-Tasman Proceedings Act and its Australian equivalent incorporate a statutory *Spiliada*-type test to apply between Australia and New Zealand.

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

other
Please indicate.