

Comparative Tables on Grounds of Jurisdiction

Prepared by the Permanent Bureau

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These tables contain a compilation of materials on direct and indirect grounds of jurisdiction from a few jurisdictions represented in the Working Group, *i.e.*, Australia, Brazil, Canada, the Republic of Korea and Serbia. The selection of these five jurisdictions is based on a fair geographical representation and attempts to provide a sample of different legal systems based on the information the Permanent Bureau has compiled so far. The sources are the Questionnaires completed in preparation for the 2013 *International Litigation in the Asia Pacific Conference* in Wuhan, People's Republic of China and the 2014 *Conference on Cross-Border Recognition and Enforcement of Judgments* in St Petersburg, Russian Federation, as well as internal research. The Permanent Bureau can expand the current tables if so instructed by the Working Group.

The current purpose of these tables is to provide examples of current laws in force, which the Permanent Bureau hopes will feed the discussion on the possible approaches to the criteria for the recognition and enforcement of judgments in the future Convention.

Direct Grounds of Jurisdiction

Jurisdiction	Relevant rules
Australia ¹	<p>Each state and territory as well as the Federal Court have specific rules which govern service in and out of the jurisdiction.</p> <p>Australian jurisdictions differ with regard to:</p> <ul style="list-style-type: none">• the grounds for granting or permitting service of process outside Australia;• whether a court's leave to serve is required; and• the information that must be provided to the party served. <p>Presently, only Western Australia and the Federal Court require the court's leave to serve.</p> <p>While all Australian jurisdictions recognise certain categories of proceedings where service abroad is permitted (such as proceedings pertaining to a contract made or broken within an Australian jurisdiction), there is considerable difference with regard to whether or not these categories must be interpreted "independently and disjunctively." In other words, jurisdictions differ as to whether all aspects of a given claim must fall under an accepted category in order for the Australian court to have jurisdiction, or whether it is sufficient for one of the claim's causes of action to fall within an accepted category. Western Australia, Victoria, South Australia and Northern Territory require all aspects of a claim to fall under an accepted category prior to exercising jurisdiction.</p>

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

	<p>Generally speaking, Australian courts have jurisdiction where:</p> <ul style="list-style-type: none"> • the defendant voluntarily submits to the jurisdiction of the Australian court; • the defendant is domiciled or resides in Australia; • the defendant carries out regular commercial activity in Australia; • the contract is performed, or there is a breach of contract, in Australia, wherever the contract is made; • the subject matter of the proceedings is a contract and the contract is made in the state on behalf of the person that is to be served by or through an agent carrying out business or residing in the state; • the contract is governed by the law of the state; • the proceedings are founded on a tort committed in the state; • the proceedings, wholly or partly, are founded on or are for the recovery of damages in respect of damage suffered in the state caused by a tortious act or omission, wherever it occurred; • the proceedings are for contribution or indemnity in respect of a liability enforceable by proceedings in a court; or • the parties to the dispute have designated the courts of Australia for the purpose of deciding disputes between them. <p>There are other grounds for service out which vary between the civil procedure rules of the states and territories and the Federal Court.</p>
Brazil	<p>Direct grounds of jurisdiction in Brazil are contained in the Civil Procedure Code of Brazil. The Code provides -</p> <p>Art. 88 - Brazilian courts have jurisdiction to hear cases where:</p> <ul style="list-style-type: none"> • the defendant, whatever his/her nationality, is domiciled in Brazil (note: a foreign juridical person with an agency, branch, or subsidiary in Brazil will be considered to be domiciled in Brazil); • an obligation (including contractual obligations) is to be fulfilled in Brazil; or • the claim arises from an event or act that occurred in Brazil. <p>Art. 89 - Brazilian courts have exclusive jurisdiction over:</p> <ul style="list-style-type: none"> • actions pertaining to real property located in Brazil; or • proceedings involving the division of property of a deceased individual, so long as the property is located within Brazil. It does not matter if the deceased person resided outside Brazil. <p>These two provisions are subject to some limited exceptions arising out of international treaty obligations (<i>e.g.</i>, air transportation).</p>
Canada	<p><i>Uniform Law</i></p> <p>The Uniform Law Conference of Canada has proposed a uniform law on jurisdiction. This uniform law removes the reliance on service of the writ and replaces it with the real and substantial connection test. It was drafted to bring the Canadian jurisdictional rules in line with the principles laid down by the Supreme Court of Canada in <i>Morguard Investments Ltd. v. De Savoye</i>². This uniform law is called the Court Jurisdiction and Proceedings Transfer Act (1994)³ and the relevant provisions are as follows -</p>

² [1990] 3 S.C.R. 1077.

³ Available on the Uniform Law Conference website at <http://ulcc.ca/en/home-en-gb-1/183-josetta-1-en-gb/uniform-actsa/court-jurisdiction-and-proceedings-transfer-act/1092-court-jurisdiction-proceedings-transfer-act?showall=&limitstart=>

Art. 3 provides that “[a] court has territorial competence in a proceeding that is brought against a person only if -
(a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
(b) during the course of the proceeding that person submits to the court's jurisdiction,
(c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
(d) that person is ordinarily resident in [enacting province or territory] at the time of the commencement of the proceeding, or
(e) there is a real and substantial connection between [enacting province or territory] and the facts on which the proceeding against that person is based.”

Art 10 provides that “[w]ithout limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between [enacting province or territory] and the facts on which a proceeding is based, a real and substantial connection between [enacting province or territory] and those facts is presumed to exist if the proceeding –

- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in immovable or movable property in [enacting province or territory],
- (b) concerns the administration of the estate of a deceased person in relation to
 - (i) immovable property of the deceased person in [enacting province or territory], or
 - (ii) movable property anywhere of the deceased person if at the time of death he or she was ordinarily resident in [enacting province or territory],
- (c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to
 - (i) immovable or movable property in [enacting province or territory], or
 - (ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in [enacting province or territory],
- (d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:
 - (i) the trust assets include immovable or movable property in [enacting province or territory] and the relief claimed is only as to that property;
 - (ii) that trustee is ordinarily resident in [enacting province or territory];
 - (iii) the administration of the trust is principally carried on in [enacting province or territory];
 - (iv) by the express terms of a trust document, the trust is governed by the law of [enacting province or territory],
- (e) concerns contractual obligations, and
 - (i) the contractual obligations, to a substantial extent, were to be performed in [enacting province or territory],
 - (ii) by its express terms, the contract is governed by the law of [enacting province or territory], or
 - (iii) the contract
 - (A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and
 - (B) resulted from a solicitation of business in [enacting province or territory] by or on behalf of the seller,
- (f) concerns restitutionary obligations that, to a substantial extent, arose in [enacting province or territory],
- (g) concerns a tort committed in [enacting province or territory],
- (h) concerns a business carried on in [enacting province or territory], or
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything:
 - (i) in [enacting province or territory], or
 - (ii) in relation to immovable or movable property in [enacting province or territory],
- (j) is for a determination of the personal status or capacity of a person who is ordinarily resident in [enacting province of territory],
- (k) is for enforcement of a judgment of a court made in or outside [enacting province or territory] or an arbitral award made in or outside [enacting

province or territory], or
(l) is for the recovery of taxes or other indebtedness and is brought by the Crown [of the enacting province or territory] or by a local authority [of the enacting province or territory].”

The Act has been incorporated in Saskatchewan, British Columbia, Yukon Territory and Nova Scotia. ⁴

Ontario

The rules with respect to direct grounds of jurisdiction in Ontario are contained in the Ontario Rules of Civil Procedure.

Pursuant to rule 17.02 of the Rules of Civil Procedure (Ontario) (RPO 1990), Regulation 194 –

“A party to a proceeding may, without a court order be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

- (a) in respect of real or personal property in Ontario;
- (b) in respect of the administration of the estate of a deceased person,
 - (i) in respect of real property in Ontario, or
 - (ii) in respect of personal property, where the deceased person, at the time of death, was resident in Ontario;
- (c) for the interpretation, rectification, enforcement or setting aside of a deed, will, contract or other instrument in respect of,
 - (i) real or personal property in Ontario, or
 - (ii) the personal property of a deceased person who, at the time of death, was resident in Ontario;
- (d) against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property in Ontario;
- (e) for foreclosure, sale, payment, possession or redemption in respect of a mortgage, charge or lien on real or personal property in Ontario;
- (f) in respect of a contract where,
 - (i) the contract was made in Ontario,
 - (ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario,
 - (iii) the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract,
or
 - (iv) a breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario;
- (g) in respect of a tort committed in Ontario”.

In the case of *Van Breda v Club Resorts*,⁵ the Supreme Court further clarified the “real and substantial connection” test, holding that the inquiry into a real and substantial connection involves 2 steps:⁶

- 1) Plaintiff must establish a “presumptive connecting factor” that connects the litigation to the jurisdiction.
- 2) Defendant may then rebut by showing that, on the facts of the particular case, the connection is insufficient.

⁴ See the status table on the Uniform Law Conference website available at <http://www.ulcc.ca/en/uniform-acts-new-order/general-information-status>.

⁵ 2012 SCC 17.

⁶ *Club Resorts Ltd. v. Van Breda* [2012] 1 R.C.S., 574-575.

The Court also identified a (non-exhaustive) list of presumptive connecting factors for cases concerning a tort:⁷

- “Defendant is domiciled or resident in the jurisdiction
- Defendant carries on business in the jurisdiction.
- The tort was committed in the jurisdiction
- A contract connected with the dispute was made in the jurisdiction.”

The court further explained that:

“Although the factors set out in the list are considered presumptive, this does not mean that the list of recognized factors is complete, as it may be reviewed over time and updated by adding new presumptive connecting factors. When a court considers whether a new connecting factor should be given presumptive effect, the values of order, fairness and comity can serve as useful analytical tools for assessing the strength of relationship with a forum to which the factors in question points.”⁸

Québec

The rules with respect to direct grounds of jurisdiction in Québec are contained in the Québec Civil Code.

Art 3148 of the Code provides that -

“In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:

- (1) the defendant has his domicile or his residence in Québec;
- (2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;
- (3) a fault was committed in Québec, injury was suffered in Québec, an injurious act occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;
- (4) the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship;
- (5) the defendant has submitted to their jurisdiction.

However, Québec authorities have no jurisdiction where the parties have chosen by agreement to submit the present or future disputes between themselves relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authorities.”

Art 3149 provides that “Québec authorities also have jurisdiction to hear an action based on a consumer contract or a contract of employment if the consumer or worker has his domicile or residence in Québec; the waiver of such jurisdiction by the consumer or worker may not be set up against him.”

Art 3150 provides that “Québec authorities also have jurisdiction to hear an action based on a contract of insurance where the holder, the insured or the beneficiary of the contract is domiciled or resident in Québec, the contract covers an insurable interest situated in Québec or the loss took place in Québec.”

Art 3151 provides that “Québec authorities have exclusive jurisdiction to hear in first instance all actions based on liability under article 3129.”

Art 3129 provides that “[t]he application of the rules of this Code is mandatory with respect to civil liability for any injury suffered in or outside Québec as a result of exposure to or the use of raw materials, whether processed or not, originating in Québec.”

⁷ *Club Resorts Ltd. v. Van Breda* [2012] 1 R.C.S., 574.

⁸ *Club Resorts Ltd. v. Van Breda* [2012] 1 R.C.S., 575.

<p>Republic of Korea⁹</p>	<p>In Korea the rule with respect to courts having jurisdiction in international cases is contained in Art. 2 of the Private International Act. Pursuant to Art. 2(1), a Korean court has jurisdiction to hear a case where the dispute or the parties are substantively related to the Republic of Korea. In determining this, “the court shall obey the reasonable principles, compatible to the ideology of the allocation of international jurisdiction, in judging the existence of the substantive relations.”¹⁰ Art. 2(2) further provides that a court shall determine whether or not it has international jurisdiction in light of jurisdictional provisions of the domestic law and shall take into consideration the unique notion of international jurisdiction.</p> <p>There are no specific grounds of international jurisdiction in Korea as no consensus could be reached during the negotiations of the Private International Law Act as to the inclusion of specific grounds.¹¹ Several commentators have criticised the lack of specific grounds of jurisdiction.¹²</p> <p>A 2002 decision of the Supreme Court provided further guidance on the application of Art 2(1). The court stated:¹³</p> <p>“In determining the international jurisdiction the court should follow the basic ideas of fairness to the parties, justice, promptness and economy of trial; more concretely, the courts should consider not only the interests of individuals such as fairness, conveniences and predictability of the litigating parties but also the interests of the courts and the state such as justice, promptness efficiency and effectiveness of court decisions. In determining which of the various interests need to be protected, the courts shall follow in concrete cases the reasonable principles in conformity with the objective test, <i>i.e.</i>, a substantial connection between the parties and the forum, and a substantial connection between the dispute and the forum.”</p> <p>The domestic direct grounds of jurisdiction from which the Korean courts can seek guidance pursuant to Art. 2(2) are found in the Code of Civil Procedure. The Code provides –</p> <ul style="list-style-type: none"> • an action can be brought in the defendant’s domicile or where the defendant resides (Art. 2); • an action can be brought in the location of the defendant’s principal office or the place where its business is located, or if there is no office or place of business, where the domicile of the person principally in charge of the business duties is located (Art. 5); • an action concerning the affairs of an office or business place against a person who keeps such an office or business place may be brought before a court located in the place of such an office or business place (Art. 12); • the claim concerning a property right may be brought before the court having the jurisdiction over the place of residence or the place of obligation (Art 8) • an action for tort may be brought before the court where the tortious act occurred (Art. 18);
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⁹ Answer obtained from the Republic of Korea’s response to the HCCH questionnaire completed in preparation for the *International Litigation in the Asia Pacific Conference*, Wuhan, People’s Republic of China available on the Hague Conference website at http://www.hcch.net/index_en.php?act=publications.details&pid=6001&dtid=55

¹⁰ The Private International Law Act is available on the Korean Ministry of Government Legislation website at http://www.moleg.go.kr/english/korLawEng.jsessionid=LFKiiP2ifnkZMVysvCG8llhqaZYcxwXx8avPaHSBDbQBvYh3nelX7KFC7zjXdYSfv.moleg_a2_servlet_engine2?pstSeq=52687&pageIndex=45

¹¹ Ministry of Justice of the Republic of Korea, Explanation of International Private Act, (Ministry of Justice of the Republic of Korea, 2001) (available in Korean only at http://www.moj.go.kr/HP/COM/bbs_03/ListShowData.do?strNbodCd=noti0021&strWrtNo=83&strAnsNo=A&strRtnURL=MOJ_10201040&strOrgGbnCd=100000).

¹² A. Han, “Court decisions related to international jurisdiction and proposal for amendment of International Private Act”, (Vol 35, February 2013) *Private Case Law Study*, 1082 (available in Korean only); T. Noh, “Analysis of the recent Supreme court decision related to International Judicial Jurisdiction: with study on the definition of Article 2 and substantive relation principle under International Private Act” (Vol. 22, 2012) *Judiciary*, 209-214 (available in Korean only).

¹³ Docket No. 2002 Da 59788 as cited in K. H. Suk, “Recognition and enforcement of foreign judgments in the Republic of Korea”, (Vol 15, 2013/2014) *Yearbook of Private International Law*, 421, 424.

	<ul style="list-style-type: none"> • an action concerning a property right against a person who has no domicile in the Republic of Korea, or against a person whose domicile is unknown, may be brought before a court located in the place of the object of the claim or those of the security, or any sizable property of a defendant (Art. 11); • if a defendant pleads to the merits of a case without contesting the jurisdiction of the court, the court will be deemed to have had jurisdiction (Art. 30); or • if the claim concerns several defendants, jurisdiction can be assumed if the court has jurisdiction over one of the defendants (Art 25). <p>While the Code of Civil Procedure does not contain provisions on exclusive jurisdiction, it has been suggested by some commentators that Korean courts have exclusive jurisdiction over claims concerning:¹⁴</p> <ul style="list-style-type: none"> • immovable property located in Korea; • “the validity of the constitution, nullity or dissolution of companies or the validity of the decisions of their organs, if the company was established in Korea”; • the validity of entries onto public registers in Korea; or • the registration or validity of patents or trademarks registered in Korea.
Serbia ¹⁵	<p>In Serbia the statutory provisions on international jurisdiction are set forth in:</p> <ul style="list-style-type: none"> • the PIL Code (Arts 46-78, 80 and 81); • the Law on Civil Procedure (Arts 16(3) and 26); • the Law of Obligations and Basic Property Relations in Aerial Navigation (Arts 158 and 164-165); • the former Yugoslav Law on Maritime and Internal Navigation (Art. 1051); • the Law on Bankruptcy (Arts 16(2), 176, 177 and 183); • the Law on Bills of Exchange (Art. 111); • the Law on Cheques (Art. 28); • the former Yugoslav Law on Foreign Investment (Art. 17); and • the Law on Public-Private Partnerships and Concessions (Art. 60(3) and 3). <p>Presently, Art. 26 of the Code of Civil Procedure provides that Serbian courts will have international jurisdiction:</p> <ul style="list-style-type: none"> • if jurisdiction is expressly determined by a statute or an international treaty; or • if the jurisdiction arises from the provisions on local jurisdiction of the domestic court. (The second option is available if there is no express provision on jurisdiction of the domestic court for the specific type of dispute with an international element.) <p><i>Submission</i></p> <p>The court will not dismiss the action for lack of international jurisdiction if the defendant has consented to the jurisdiction of the court (the LCP, Art 16, paragraph 3). The consent may be given expressly in a choice of court agreement or choice of court clause, or tacitly, by entering appearance without raising the objection of lack of jurisdiction of the Serbian court, or by filing a pleading that contains an answer to the claim.</p>

¹⁴ Ibid, 427.

¹⁵ Answer obtained from Serbia’s response to the HCCH questionnaire completed in preparation for the conference on Cross-Border Recognition and Enforcement of Judgments, St Petersburg, Russian Federation available on the Hague Conference website here http://www.hcch.net/index_en.php?act=publications.details&pid=6152&dtid=55

Defendants domicile is in Serbia

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

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

Contractual or non-contractual obligations

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

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

Choice of court agreements

The choice of forum agreement in favour of a Serbian court will be enforced if at least one of the parties is a citizen of Serbia or a legal entity having its seat in Serbia (the PIL Code, Art 49(2)). Similarly, the choice of forum agreement in favour of a foreign court will be enforced if the dispute does not belong to exclusive jurisdiction of Serbian courts, and if at least one of the parties is a foreign citizen or a legal entity having its seat abroad (the PIL Code, Art. 49(1)). The PIL Code does not require any special form for such agreements.

Torts

Serbian courts have jurisdiction in disputes on non-contractual liability for damages, if the damage occurred in the territory of Serbia. This provision applies also in disputes initiated by direct action of the tort victim against the insurance company for compensation of damages and in recourse actions (the PIL Code Art 53).

Tangible property

Serbian courts have jurisdiction in disputes on contractual and non-contractual claims, if the defendant's tangible or intangible property is found in the territory of Serbia (Art 54(1)).

Aircraft and ship disputes

Serbian courts have jurisdiction in disputes on ownership, disposal with, liens on and leasing of aircraft and ships, if the aircraft or ship is registered in Serbia (Art 58(1)).

Indirect Grounds of Jurisdiction

Jurisdiction	Relevant rules
Australia	<p>Australian courts recognise and enforce foreign judgments either under common law or under a statutory regime, the Foreign Judgments Act 1991 (Cth). Under the common law there are three grounds of indirect jurisdiction upon which an Australian court will recognise and enforce a foreign judgment. These are when¹⁶ –</p> <ol style="list-style-type: none"> 1) The judgment debtor was either a resident of the foreign jurisdiction or was present in the jurisdiction at the time of commencement of the proceedings. This rule mirrors the service of process rules which are required for Australian courts to assume jurisdiction over foreign defendants. <ol style="list-style-type: none"> a. Natural persons – the judgment debtor must be personally present in the jurisdiction. b. Corporations – in the context of corporations the term “presence” denotes a sufficient territorial connection rather than the corporation being physically located in the forum. 2) The judgment debtor submitted to the jurisdiction of the foreign court. Submission can be by agreement or by voluntarily participating in the court proceedings without contesting the jurisdiction of the foreign court. 3) The judgment debtor is a citizen of the foreign country. <p>In the past, Australian courts have explored possible other bases, including reciprocity/comity, nationality and domicile, but those have not found acceptance under Australian common law.¹⁷</p> <p>Recognition and enforcement under the Foreign Judgments Act 1991 (Cth) (FJA)¹⁸ is by way of registration. This streamlined process is based on reciprocal arrangements between Australian and foreign courts. The foreign courts are scheduled in the Foreign Judgments Regulations 1992. The FJA, too, requires an inquiry into the jurisdiction of the foreign adjudicating court. Under section 7 of the FJA, a court must not register a foreign judgment if it determines that the court that rendered the foreign judgment did not have jurisdiction to hear the case. Foreign courts are deemed to have had jurisdiction where:</p> <ul style="list-style-type: none"> • For actions in <i>personam</i> where the judgment debtor: <ul style="list-style-type: none"> ○ voluntarily submitted to the jurisdiction of the foreign court; <ul style="list-style-type: none"> ▪ the following circumstances do not alone amount to voluntary submission: <ul style="list-style-type: none"> • entering an appearance; • participating in a proceeding merely to protect, or obtain the release of property seized, or threatened with seizure, or property subject to an order restraining its disposition or disposal; or • appearing in order to contest the jurisdiction of the foreign court or in order to invite the court in its discretion not to exercise its jurisdiction in the proceedings; ○ was the plaintiff or counter-claimed in the foreign proceedings; ○ was a defendant in the foreign proceedings and agreed to the jurisdiction of that court or courts of that country; ○ was a defendant in the foreign proceedings and, at the time of commencement of the proceedings, resided in or had its principal place of business in that country; or

¹⁶ S. Harder, “Recognition and enforcement of Foreign Judgments in Australia”, *Yearbook of Private International Law* (Vol 15, 2013/14), 258-262.

¹⁷ M. Davies, A.S. Bell, P.L.G. Brereton, *Nygh’s Conflict of Laws in Australia*, (8th ed, 2010, LexisNexis Australia), 808, 815 – 817.

¹⁸ Foreign Judgments Act 1991 (Cth), available at <http://www.comlaw.gov.au/Details/C2010C00317/Download>

	<ul style="list-style-type: none"> ○ was a defendant in the foreign proceedings and the matter adjudicated was in respect of a transaction effected through an office or place of business in that country. ● For actions with respect to immovable property or action <i>in rem</i> of which the subject matter is movable property - if the property in question was, at the time of the proceedings, located in the country of that foreign court; or ● If the jurisdiction of the foreign court is recognised by the law in force in the Australian State or Territory in which recognition or enforcement is being sought. <p>Foreign courts are deemed to not have had jurisdiction if:¹⁹</p> <ul style="list-style-type: none"> ● the subject matter of the proceedings was immovable property situated outside the country of the foreign court that rendered the judgment; ● the bringing of the proceedings in the foreign court was contrary to an agreement between the parties stipulating the courts of another country; or ● the defendant in the foreign proceedings was entitled to immunity from the jurisdiction of the court that rendered the judgment and did not submit to that jurisdiction.
Brazil	<p>The indirect jurisdiction rules are contained in a Resolution of the "Superior Tribunal de Justiça" (Superior Court of Justice, the court in Brazil entitled to deal with foreign judicial decisions intended to have effect in Brazil).²⁰ Art. 5 of the Resolution provides that in order for a foreign judgment to be enforced it must have been rendered by a competent authority. The Resolution goes on to explain that a "competent authority" in the context of Art. 5 means that the foreign court did not assume jurisdiction which contravenes an exclusive ground of jurisdiction as contained in Art. 89 of the Civil Procedure Code of Brazil (actions pertaining to real property located in Brazil or proceedings involving division of property of a deceased individual, which is located in Brazil).</p> <p>For other cases, the criteria established by Art 88 of the Civil Procedure Code (see other table above) may be applied in order to determine whether the jurisdictional connection was sufficient.</p>
Canada	<p>The most pertinent case on indirect grounds of jurisdiction in Canada is <i>Morguard Investments Ltd. v. DeSavoye</i>²¹. In that case, the Canadian Supreme Court established a principle of comity, noting that Canadian provincial courts should enforce "foreign judgments" (originally intended to mean judgments from other provinces), as long as the court issuing the judgment had 1) legitimately exercised its jurisdiction, and 2) reached its judgment via fair process. The test for legitimate exercise of jurisdiction is a "real and substantial connection" between the jurisdiction and the defendant or subject matter of the case. A real and substantial connection can be indicated by (among other factors):</p> <ul style="list-style-type: none"> ▪ "Any nexus between the subject matter and the territory in which the action is brought"; or ▪ "Any connection between the damages suffered and the jurisdiction in which the action is brought." <p>The real and substantial connection test was extended to the recognition and enforcement of foreign judgments arising out of international cases in the case of <i>Beals v Saldanha</i>.²²</p>

¹⁹ Section 7(4) of the *Foreign Judgments Act 1991* (Cth).

²⁰ STJ, Resolução 9/2005, available at <<http://www.stj.jus.br/SCON/legislacao/doc.jsp?numero=%22922&norma=%27RES%27&b=LEGI&p=true&t=&l=20&i=1>>.

²¹ [1990] 3 SCR 1077.

²² 2003 SCC 72.

Since the development of the test the Uniform Law Conference of Canada has proposed a uniform law on the recognition and enforcement of foreign judgments incorporating the real and substantial connection test. The legislation is called the Uniform Enforcement of Foreign Judgments Act (2003)²³ and the relevant provisions are as follows -

Art 8. "A court in the State of origin has jurisdiction in a civil proceeding that is brought against a person if

- (a) the person expressly agreed to submit to the jurisdiction of the court;
- (b) as defendant, the person submitted to the jurisdiction of the court by appearing voluntarily;
- (c) the person commenced a counterclaim to the proceeding;
- (d) the person, being a natural person, was ordinarily resident in the State of origin;
- (e) the person, not being a natural person, was incorporated in the State of origin, exercised its central management in that State or had its principal place of business located in that State; or
- (f) there was a real and substantial connection between the State of origin and the facts on which the proceeding was based."

Art 9. "For the purposes of paragraph 8(f), in the case of a foreign judgment allowed by default, a real and substantial connection between the State of origin and the facts on which the civil proceeding was based is established in, but is not limited to, the following cases:

- (a) the judgment debtor, being a defendant in the court of the State of origin, had an office or place of business in that State and the proceedings were in respect of a transaction effected through or at that office or place;
- (b) in an action for damages in tort or for extra-contractual damages
 - (i) the wrongful act occurred in the State of origin, or
 - (ii) injury to person or property was sustained in the State of origin, provided that the defendant could have reasonably foreseen that the activity on which the action was based could result in such injury in the State of origin, including as a result of distribution through commercial channels known by the defendant to extend to that State;
- (c) the claim was related to a dispute concerning title in an immovable property located in the State of origin;
- (d) in an action for damages in contract, the contractual obligation was or should have been performed in the State of origin;
- (e) for any question related to the validity or administration of a trust established in the State of origin or to trust assets located in that State, the trustee, settlor or beneficiary had his or her ordinary residence or its principal place of business in the State of origin; or
- (f) the claim was related to a dispute concerning goods made or services provided by the judgment debtor and the goods and services were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident in the State of origin and were marketed through the normal channels of trade in the State of origin."

Commentary suggests that the real and substantial connection test is intended to operate "only in the case of default judgments and in a non-exhaustive fashion so that additional grounds which would be acceptable both in the State of origin and in Canada could be considered by the enforcing court."²⁴

²³ Available on the Uniform Law Conference website at <http://ulcc.ca/en/home-en-gb-1/353-josetta-1-en-gb/uniform-actsa/enforcement-of-foreign-judgments-act/662-enforcement-of-foreign-judgments-act>. The Act has been incorporated in Saskatchewan and was already incorporated in Quebec. See the status table on the Uniform Law Conference website available at <http://www.ulcc.ca/en/uniform-acts-new-order/general-information-status>.

²⁴ See comments to the Uniform Enforcement of Foreign Judgments Act (2003) available at <http://ulcc.ca/en/home-en-gb-1/353-josetta-1-en-gb/uniform-actsa/enforcement-of-foreign-judgments-act/662-enforcement-of-foreign-judgments-act>.

<p>Republic of Korea²⁵</p>	<p>The provisions in Korea with respect to the recognition and enforcement of judgments can be found in the Code of Civil Procedure and the Code of Civil Execution. The Code of Civil Execution specifies that in order for a judgment to be recognised and enforced, it must comply with the conditions as set out in Art. 217 of the Code of Civil Procedure.²⁶ The jurisdictional requirement is located at Art 217(1) which states that: “the foreign court should have international jurisdiction under the principles of international jurisdiction laid down in Korean law or international treaties.” As indicated above, the Code of Civil Procedure does not contain a list of grounds of jurisdiction, but rather a general test enabling courts to consider whether they have jurisdiction on a case by case basis. As with direct grounds of jurisdiction, Korean courts may also seek guidance from the relevant domestic provisions contained in the Code of Civil Procedure of Korea (as set out in the above table).</p>
<p>Serbia²⁷</p>	<p>In Serbia the statutory provisions on the recognition and enforcement of foreign judgments are contained in the 1982 Private International Law Code. Jurisdiction of a foreign court is one of the conditions. However, the Code formulates the test negatively (<i>i.e.</i>, when a foreign judgment will not be recognised and enforced), and it does not include a statement of indirect grounds of jurisdiction.</p> <p>Basically, a foreign judgment will not be recognised if the Serbian court or other Serbian authority had exclusive jurisdiction over the matter that was decided (Art 89, paragraph 1). For the exclusive jurisdiction to exist, there has to be an express provision in a statute (the PIL Code, Art 47).</p> <p>The grounds of exclusive jurisdiction under the Statutes currently in force, are the following:</p> <ul style="list-style-type: none"> - disputes concerning real rights regarding immovables, leasing of immovables and possessory actions relating to immovables, if the immovables are located in the territory of Serbia (the PIL Code, Art 56); - disputes relating to foreign investment in Serbia; (NB: even though these disputes might be referred to arbitration rather than litigation) (the former Yugoslav Foreign Investment Act, Art 17); - disputes arising out of private-public partnerships established in Serbia and concessions granted in Serbia; (NB: even though these disputes might be referred to arbitration rather than litigation) (the Act on Public-Private Partnerships and Concessions, Art 60); and - bankruptcy proceedings and disputes arising from bankruptcy, if the debtor has the centre of its main interests in Serbia (Bankruptcy Code, Art 174a – as amended in 2014). <p>Note - There are also certain provisions on exclusive jurisdiction of domestic courts in the former Yugoslav Law on Maritime and Internal Navigation (LMIN) (Art 1051), the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision (Art 1), the Montreal Convention for the Unification of Certain Rules for International Carriage by Air (Art 33), the International Convention on Civil Liability for Bunker Oil Pollution Damage (Art 9), etc.</p> <p>It should also be noted that a Draft PIL Code was submitted to the Serbian Ministry of Justice by a designated group of experts in May 2014. Under this Draft Code, a foreign judgment will be recognised in the Republic of Serbia if:</p> <ul style="list-style-type: none"> • a court or other authority of the Republic of Serbia does not have exclusive jurisdiction over the dispute, and • the foreign court established its jurisdiction on facts that are stipulated as grounds of jurisdiction in the law of the Republic of Serbia for the same kind of dispute.

²⁵ Answer obtained from the Republic of Korea’s response to the HCCH questionnaire completed in preparation for the *International Litigation in the Asia Pacific Conference*, Wuhan, People’s Republic of China available on the Hague Conference website at http://www.hcch.net/index_en.php?act=publications.details&pid=6001&dtid=55.

²⁶ K. H. Suk, above n 14, 422.

²⁷ Answer kindly provided by M. Stanivuković, expert for the Serbian delegation of the Working Group.

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

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