



**TO:** Permanent Bureau of the Hague Conference on Private International Law

**DATE:** July 1, 2015

**RE:** Comparative Study of Jurisdictional Gaps and Their Effect on the Judgments Project

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A “Jurisdictional Gap” is defined as the situation where a state will assert personal jurisdiction<sup>1</sup> on a different set of bases (*viz.* “direct” jurisdiction) than they will recognize as valid when assessing whether to recognize a foreign judgment (*viz.* “indirect” jurisdiction). When this occurs, civil and commercial disputes<sup>2</sup> may be subject to various overlapping sovereigns who rightfully claim jurisdiction under their own national laws. While this is not problematic *per se*, a predictable and efficient system of transnational justice begins to unravel when the direct jurisdiction asserted by the court of origin is not recognized by the court(s) addressed, viewing the matter indirectly. The situation becomes especially awkward (and inequitable) when the court addressed refuses recognition due to the lack of jurisdiction in the court of origin, but could have asserted direct jurisdiction *itself* on the same basis. One of the goals of a multilateral convention the recognition and enforcement of judgments (“**Convention**”) should be to close the jurisdictional gaps in national law, and mitigate this inequity.

Attached to this report is an Annex that contains a summary of national laws from most Hague Member States (as well as the laws from a number of non-Member States). This summary is intended to reach a clear and precise conclusion about each State regarding the existence, form and breadth of any jurisdictional gaps in its law. Where possible, this conclusion has been made and explicated by attorneys barred in the relevant jurisdiction. To broaden the study, however, some of the laws discussed herein have been compiled by foreign

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<sup>1</sup> For purposes of this study, we have considered only the various bases for jurisdiction over the parties to the dispute (*viz.* “personal jurisdiction”), as opposed to the various bases for jurisdiction over the subject matter of the dispute (*viz.* “subject matter jurisdiction”). AS a result, national laws that provide for personal jurisdiction based on the subject matter of the dispute (*e.g.* certain *in rem* cases) have also been excluded as the possible basis of a jurisdictional gap. While exclusive jurisdiction over these sorts of cases is common around the world, and may create a jurisdictional gap in certain circumstances, they were considered beyond the scope of this study

<sup>2</sup> For purposes of this study, we have opted to exclude those bases of jurisdiction created by existing multilateral or bilateral treaties, and those regarding non-civil and non-commercial matters (*viz.* family law matters, employment contracts, wills and succession. *See, e.g.*, Preliminary Draft Text of the Working Group on the Judgments Project Emanating from its Fourth Meeting (“**Preliminary Draft Text**”), Article 2). In addition, this study does not consider any reciprocity condition in the consideration of jurisdictional gaps. To be sure, such a requirement could conceivably create a gap between the assertion of jurisdiction and the recognition of a foreign judgment, but that practical fact is beyond the scope of the present study.

lawyers based on publicly available and translated sources, which may of course omit nuances in national laws that is not readily apparent from the text of the relevant code provisions.<sup>3</sup>

This memorandum and the comparative study attached hereto illustrates two important points, which we hope will inform the discussion on the possible approaches to a future Convention. *First*, jurisdictional gaps are relatively prevalent around the world; they present themselves in several different forms, without any clear alignment based on geography or legal traditions. *Second*, these jurisdictional gaps are inimical to the international law principles of equitable and national treatment, and they detrimentally affect comity among domestic courts as well as the predictability and efficiency of transnational justice. This report will conclude by considering various ways in which this jurisdictional gap can be addressed by a new, multilateral Convention on the recognition and enforcement of foreign judgments.

### **THE GLOBAL PREVALENCE AND DETRIMENTAL EFFECTS OF “JURISDICTIONAL GAPS”**

The study appended in the Annex looks at 75 national laws on jurisdiction and the recognition of foreign judgments. Of those countries studied, 27 (36%) present no jurisdictional gap, as we have defined it. Typically (though not exclusively), the law in these places simply provides that the jurisdictional basis of the judgment in the court of origin shall be assessed against the bases of direct jurisdiction in the court addressed.<sup>4</sup>

On the other hand, however, 48 (64%) of the national laws studied present some jurisdictional gap. With minor outliers, these jurisdictional gaps generally present themselves in three basic forms.

*First*, at least twelve of the states included in the study authorize a broad scope of direct jurisdiction for their own courts, but *no* statutory avenue to recognize and enforce a foreign judgment.<sup>5</sup> This situation is especially prevalent in Southeast Asia, Central Asia, and the Nordic

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<sup>3</sup> Accordingly, neither this study nor the accompanying memorandum should be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. The receipt of this publication by any party other than the Permanent Bureau is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views and positions set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm or its clients.

<sup>4</sup> See Annex (Albania, Argentina, Austria, Bulgaria, Canada, Chile, China (Hong Kong), Czech Republic, Estonia, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Rep. of Korea, Latvia, Luxembourg, Malta, Mexico, Morocco, Netherlands, Slovakia, Suriname, Taiwan, United States).

<sup>5</sup> See Annex (Cyprus, Denmark, Finland, Iceland, Indonesia, Kazakhstan, Laos, Norway, Sri Lanka, Sweden, Thailand, Uzbekistan). To be sure, most (if not all) of these states will recognize and enforce foreign judgments when obligated to do so by treaty (e.g. the Brussels and Lugano Conventions). Throughout this report and in the Annex, however, we have excluded discussions of existing multilateral or bilateral treaties, and the indirect bases of jurisdiction prescribed therein.

countries. Accordingly, these states do not recognize *any* bases of indirect jurisdiction, leading to a *complete* jurisdictional gap in their national law.

*Second*, some national laws maintain separate lists of direct and indirect jurisdictional bases, with the former is broader than the latter.<sup>6</sup> This situation presents itself in eleven of the states included in the study; it is especially pervasive throughout the UK Commonwealth countries. In these States, courts may exercise broader direct jurisdiction than they will recognize as the basis of an enforceable foreign judgment, leading to a (sometimes narrow) jurisdictional gap.

*Third*, at least twenty-three States present a *reverse* jurisdictional gap in their national law—that is, a broader authorization of indirect jurisdiction than direct jurisdiction. This situation is typically presented where a state does not consider indirect personal jurisdiction as a condition to recognizing a foreign judgment (which is prevalent in Latin America, Eastern Europe and the CIS),<sup>7</sup> or where it defines the standard for indirect jurisdiction by reference to the jurisdictional parameters of the State of origin.<sup>8</sup> In these places, at least theoretically, the courts may enforce a judgment rendered on a jurisdictional basis that its own courts are not authorized to exercise, thereby giving broader effect to foreign judgments than domestic judgments. There are also a few other countries who in general terms simply provide a broader set of indirect jurisdictional bases than direct ones.<sup>9</sup>

In the first two scenarios, the jurisdictional gap is inimical to the international law principles of equitable and national treatment, and it detrimentally affects comity among domestic courts as well as the predictability and efficiency of transnational justice. Suppose, for example, that a dispute arises between a party domiciled in the United Arab Emirates (“UAE”) and a party domiciled in Nigeria, based upon a contract performed in the UAE but governed by Nigerian law. The case may be heard in the UAE (if the Nigerian party is properly served there), but the resulting judgment would not be enforceable in Nigeria.<sup>10</sup> Similarly, the case may be heard in Nigeria, but the resulting judgment could not be enforced in the UAE.<sup>11</sup>

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<sup>6</sup> See Annex (Australia, Ghana, Jordan, Kenya, New Zealand, Nigeria, Seychelles, Switzerland, Uganda, United Kingdom, Zambia). At least two other states present a corollary to this situation, where direct jurisdiction in the enforcing court will oust indirect jurisdiction in the rendering court, thereby creating a gap. See *id.* (Egypt and the United Arab Emirates).

<sup>7</sup> See Annex (Azerbaijan, Belarus, Bosnia & Herzegovina, Peoples’ Rep. of China, Colombia, Costa Rica, Croatia, Panama, Portugal, Russia, Spain, Tunisia, Ukraine).

<sup>8</sup> See Annex (Brazil, Turkey, Lebanon, Saudi Arabia, Romania, Uruguay).

<sup>9</sup> See Annex (Belgium, Burkina Faso, France, India)

<sup>10</sup> See Annex at pp. 21 (Nigeria), 30 (UAE).

<sup>11</sup> See *id.*

The result is a judgment that is bound to one locale; necessitating parallel suits on the merits in both places; and a system of transnational justice that has failed.<sup>12</sup>

Worse, this situation creates a degree of national bias. As the above hypothetical illustrates, both Nigeria and the UAE (among many other states) will exercise broader jurisdiction than they will recognize from their counterparts in other states. This runs contrary to several fundamental principles of international law, including the notion of sovereign equality,<sup>13</sup> and the general principle of juridical equality between the parties in their capacity as litigants—*audiatur et altera pars*. This latter principle is a key component of a fair trial,<sup>14</sup> and dictates that each party should not be placed “under conditions [of] a substantial disadvantage vis-à-vis its opponent.”<sup>15</sup> Take, for instance, a U.S. company who negotiates and signs a long-term contract with an Australian company in New York, with a New York choice of law governing performance to occur entirely in Australia. Absent a contractual choice of forum, a dispute regarding that transaction might properly be adjudicated in either place—*viz.* both parties might be subject to the jurisdiction of the foreign forum.<sup>16</sup> The inequity arises once a judgment is rendered. Any judgment from an Australian court regarding this dispute will likely be recognized in the United States (provided all non-jurisdictional formalities are satisfied).<sup>17</sup> However, any judgment from a New York court regarding this dispute would likely not be enforceable in Australia.<sup>18</sup> The Australian courts would thus have unequal authority vis-a-vis the New York court, and the U.S. party would find itself at a “substantial disadvantage” due to the jurisdictional gap in Australian law.

#### MITIGATING “JURISDICTIONAL GAPS” THROUGH A MULTILATERAL TREATY

The above discussion identifies five ways in which national laws address indirect jurisdiction when considering the recognition and enforcement of a foreign judgment. A State may (1) define indirect jurisdiction by its own laws on direct jurisdiction; (2) define indirect

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<sup>12</sup> Because the national laws are similar, the same situation would present itself with an Egyptian party on one side, and a Kenyan, Ugandan or Zambian party on the other. See Annex at pp. 10 (Egypt), 16 (Kenya), 27 (Uganda), 31 (Zambia).

<sup>13</sup> United Nations Charter, Art. 2(1).

<sup>14</sup> Bin Cheng, *GENERAL PRINCIPLES OF LAW* 290 (Cambridge 1953) .

<sup>15</sup> *Kaufman v. Belgium*, App. No. 10938/84, 50 Eur. Comm’n H.R. Dec. & Rep. 98, 115 (1986). See also, *Dombo Beheer B.V. v. The Netherlands*, ECHR, Judgment (27 Oct. 1993) ¶ 40; *Delcourt v. Belgium*, ECHR, Judgment (17 Jan. 1970) ¶ 34.

<sup>16</sup> Regarding the jurisdictional reach of New York law regarding a dispute of this nature, see, *e.g.*, *Sunward Elecs. Inc. v. McDonald*, 362 F.3d 17 (2d Cir. 2004). Regarding the jurisdictional reach of Australian law regarding a dispute of this nature, see Annex at p. 2 (Australia)

<sup>17</sup> See, *e.g.*, *Sunward Elecs. Inc. v. McDonald*, 362 F.3d 17 (2d Cir. 2004) (holding that direct jurisdiction in New York exists over a claim of this nature); see also Annex at p. 30 (noting that U.S. law applies its own direct jurisdictional standards to assess the propriety of indirect jurisdiction).

<sup>18</sup> See Annex at p. 2 (discussing the jurisdictional gap in Australian law, whereby only voluntary submission, residence or having an office in the foreign forum will satisfy the test for indirect jurisdiction).

jurisdiction by the rules of the State of origin governing direct jurisdiction; (3) maintain separate lists of jurisdictional bases for direct and indirect jurisdiction; (4) not condition recognition of a foreign judgment on indirect jurisdiction at all; or simply (5) not recognize any foreign judgments. These various approaches may help guide the draft text of a multilateral Convention.

For obvious reasons, the last two approaches should be disregarded for purposes of a multilateral Convention. The whole point of a Convention is to facilitate the flow of judgments across national borders, not inhibit it, so loosening the approach of the States in the last category is the primary aim.<sup>19</sup> Similarly, disregarding the question of indirect jurisdiction in a Convention does nothing to address the problem of jurisdictional gaps. Even more problematically, it would oblige signatory states to recognize and enforce judgments rendered on exorbitant jurisdictional bases, which could understandably stifle acceptance of the Convention around the world.

The first three approaches deserve the most consideration in the draft text; the benefits and detriments of each approach will be discussed in turn.

*First*, the Convention could define indirect jurisdiction by the rules governing direct jurisdiction in the State of origin. This has the benefit of simplicity and a Convention that gives foreign judgments the full force and effect they would receive in their home jurisdiction. This approach, however, would also present significant drawbacks. It would once again oblige signatory states to recognize and enforce foreign judgments rendered on exorbitant bases of jurisdiction, so long as those bases were accepted in the State of origin, thereby incentivizing those states to continue asserting jurisdiction on these bases. And, practically speaking, this approach would require courts to discern the contours of a foreign state's jurisdictional rules, which can be notoriously difficult (especially when those rules are defined by judicial decisions as opposed to a code). On balance, this approach seems unwise.

*Second*, the Convention could define indirect jurisdiction by the rules on direct jurisdiction in the State addressed. Once again, this approach has the benefit of simplicity, as the Convention need not designate a list of accepted jurisdictional bases. It would also close most jurisdictional gaps. To use the example discussed above, if Nigeria and the UAE were to recognize judgments on the same basis that they asserted direct jurisdiction, the hypothetical judgment left in legal limbo would be equally enforceable in both places. Moreover, this approach would incentivize states to curtail their jurisdictional reach, lest they be obliged to recognize and enforce foreign judgments rendered on the same exorbitant bases. The problem of discerning and applying foreign law also disappears.

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<sup>19</sup> It should be noted that the Convention would not reform domestic law in these places per se. Most of these states already have bilateral and/or multilateral treaties governing the recognition and enforcement of foreign judgments, and/or acknowledge a treaty obligation as a means to judgment recognition. See *supra* note 5. Another multilateral Convention on the subject would simply open that existing door even further.

*Third*, the Convention could provide a list of indirect bases of jurisdiction, thereby creating an international obligation to recognize and enforcement judgments rendered on these bases.<sup>20</sup> As this study reflects, most countries that do this in their own national law leave a measurable gap between the bases of direct and indirect jurisdiction.<sup>21</sup> This need not be the case. At least one country included in this study (Switzerland) maintains two separate lists of direct and indirect jurisdictional bases, but largely mirrors them to eliminate (or at least mitigate) the jurisdictional gap.<sup>22</sup> Of course, as a practical matter, a multilateral Convention cannot be expected to mirror every bases of direct jurisdiction contained in national laws. What it could do, however, is (1) describe the easy cases that present no jurisdictional argument; (2) compile a list of universally-accepted jurisdictional bases on which there is no quarrel for the cases that remain, and (3) oblige signatory states to recognize and enforce foreign judgments in the easy cases, as well as in those cases which pass the second jurisdictional bases test.

Identifying the easy cases may be done based on the line-up of the parties' domicile and outcome. When, for instance, a judgment is rendered against a defendant in his home State (*viz.* his place of domicile), recognition and enforcement of that judgment elsewhere should raise no jurisdictional objection in any country around the world. Only those (rarer) judgments rendered against a defendant in a State that is not his own demand a more scoping assessment of the jurisdictional bases for that judgment before it can be recognized and enforced beyond the court of origin.<sup>23</sup> These are the hard cases for the Convention to address, but addressing them nonetheless by compiling a list of universally-accepted jurisdictional bases would have two salutary effects. *First*, it would promote the formulation of a general principle of law as it relates to personal jurisdiction, which to date has been elusive in international agreements and in scholarly commentary.<sup>24</sup> *Second*, it would encourage states (and more importantly litigating

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<sup>20</sup> The present Draft Text of the Convention does this, see Preliminary Draft Text, art. 5(3).

<sup>21</sup> See *supra* note 6.

<sup>22</sup> See Annex p. 28.

<sup>23</sup> See generally Ronald A. Brand, *Understanding Judgments Recognition*, 40 N.C. J. of Int'l L & Comm. Reg. 877, 901-03 (2014)

<sup>24</sup> There may be a temptation to identify a some minimal bases of personal jurisdiction under international law. Well-intentioned attempts appear in the UNIDROIT Principles of Transnational Civil Procedure, which require a "substantial connection between the forum state and the party or the transaction or occurrence in dispute."<sup>24</sup> UNIDROIT Principles of Transnational Civil Procedure at § 2.1.2 & cmt. P2-B. Under that source, a "substantial connection" might exist when (i) "a significant part of the transaction or occurrence occurred in the forum state," (ii) "an individual defendant is a habitual resident of the forum state or a judicial entity has received its charter of organization or has its principal place of business therein," or (iii) "property to which the dispute relates is located in the forum state." Scholars have stated the "substantial connection" standard differently, for example by requiring a "clear connecting factor," or a factual "linking point ... between the legislating state and the conduct that it seeks to regulate [abroad]." V. Lowe, *JURISDICTION IN INTERNATIONAL LAW* 342 (M.D. Evans ed., 2d ed. 2006) (emphasis added); see also I. Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 309 (6th ed. 2003) (requiring a "substantial and bona fide connection between subject matter and the source of the jurisdiction" (emphasis added)); *THE EXTRATERRITORIAL APPLICATION OF NATIONAL LAWS* 46-47 (D. Lange and G. Born, eds., 1987) ("[I]ncreasing support has developed for a jurisdictional rule of reason that would limit unreasonable exercises of national

parties) to limit their assertion of personal jurisdiction to bases reflected in the initial filter and then on the Hague Convention list. When they reach beyond that list to assert jurisdiction over a party, they would run the risk of holding a strictly territorial judgment, unenforceable anywhere else. The Convention would, in effect, incentivize litigants to make a non-exorbitant choice of forum

On balance, this third approach would be the most ambitious, but also the most effective if the negotiating parties want to significantly improve the transnational regime for jurisdiction and the recognition and enforcement of judgments. If, however, consensus proves elusive on the list of minimally accepted jurisdictional bases, the second approach would still mitigate the problem of jurisdictional gaps, eliminate national biases, and incentivize the diminution of national jurisdictional competence.

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It has been Jones Day's distinct honor to present this Report to the Permanent Bureau. Jones Day has a strong commitment to the development of the Rule of Law in countries around the world, and the work of the Hague Conference is essential to that development.

The mobilization of people and assets requires the mobilization of legal rights. This, in turn, requires widespread acceptance of certain fundamental rights of international due process. Adequate notice of legal process is essential, which is perhaps why the acceptance of the Hague Service Convention has been so widespread. The right to present one's defense to legal claims is likewise a universal principle of due process—accordingly, the ability to take evidence under the Hague Evidence Convention plays a key role in transnational justice.

Perhaps the most important facet of this system of justice, though, is the ability to make resulting domestic judgments meaningful and real—that is, to make them enforceable beyond the borders of their State of origin. The Hague Choice of Courts Convention provides a parallel analogue to the New York Convention on the Enforcement of Arbitral Awards when parties prefer their legal rights to be determined by a court rather than an arbitrator. Together, these instruments reflect and confirm the general principle of *pacta sunt servanda*, at least as it relates to a parties' conscious choice of forum. The contemplated Convention on the recognition and enforcement of foreign judgments takes these accomplishments one step further, and aims to provide a meaningful mechanism for parties to enforce judgments where there is no contractually-chosen place of adjudication. This would complete the cycle that began with the Hague Service Convention, and make international litigation more efficient, more effective, and reflective of some basic principles of international due process.

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(continued...)

jurisdiction" and thereby "limit[] applications of national laws that unduly interfere with foreign interests and international trade"). Despite these efforts, the differences in national laws on the subject, and the vagaries in these international definitions, makes any general principle of personal jurisdiction difficult to endorse.



**ANNEX**

**COMPARATIVE TABLE ON GROUNDS OF JURISDICTION IN CIVIL AND COMMERCIAL MATTERS**

*Prepared by Jones Day, July 2015*

<b>State</b>	<b>Identification of a Jurisdictional Gap</b>	<b>Jurisdictional Gap Favoring National Courts</b>	<b>Jurisdictional Gap Favoring Foreign Courts</b>
<b>Albania</b>	<i>No.</i> Albanian courts will not recognize a foreign judgments if, <i>inter alia</i> , the foreign court did not have authority pursuant to Albanian law. Code of Civil Procedure Article 394.		
<b>Argentina</b>	<i>No.</i> Section 517 of the Argentine National Code of Civil and Commercial Procedure establishes that foreign judgments will be recognized and enforced in Argentina if they have been rendered by a competent court according to Argentine rules for international jurisdiction		
<b>Austria</b>	<i>No.</i> Austrian law provides that foreign judgments from non-EU states are enforceable on the basis of reciprocity, so long as, <i>inter alia</i> , the foreign court had personal jurisdiction pursuant to the rules of Austrian law.		



State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Australia	Yes.	<p>Australian courts can assert jurisdiction on over a defendant that, <i>inter alia</i>, carries out regular commercial activity in Australia, see <i>Perrett v Robinson</i> [1985] 1 Qd R 83; where a contract is performed or breached in Australia, see <i>Asset Insure Pty Ltd v New Cap Reinsurance Ltd</i> (2004) 61 NSWLR 451; and where a tort is committed or damages suffered in Australia, see <i>Voth v Manildra Flour Mills Pty Ltd</i> (1990) 171 CLR 538 at 566–70. None of bases are proper when an Australian Court is assessing whether to recognize a foreign judgment. See Foreign Judgments Act 1991, Art. 7(3) (listing appropriate bases of indirect jurisdiction, including voluntarily submission to the jurisdiction of the foreign court—by agreeing in advance, claiming or counterclaiming in the foreign court—being resident in the country of that court, or being sued in relation to a transaction effected through or at an office or place of business in the country of that court).</p>	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Azerbaijan</b>	Yes.		According to the Civil Procedure Code a foreign judgment will not be recognized <i>inter alia</i> if the consideration of the case was within the exclusive subject matter jurisdiction of a court in Azerbaijan; the execution of the foreign judgment would be contrary to the sovereignty and fundamental principles of Azerbaijani legislation; or there is no guarantee of reciprocity on the part of foreign State. The absence of any analysis by the Azerbaijani courts of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.
<b>Belarus</b>	Yes.		According to Article 248 of the Commercial Procedure Code a foreign judgment will not be recognized <i>inter alia</i> if the consideration of the case was within the exclusive subject matter jurisdiction of a court in Belarus and the execution of the foreign judgment would be contrary to the public policy of Belarus. The absence of any analysis by the Belarusian court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Belgium	Yes.		<p>The Belgian Courts have direct jurisdiction where: (i) the defendant is domiciled or has its habitual residence in Belgium at the filing of the claim (article 5 CIPL); (ii) the parties have validly agreed that the Belgian courts will have jurisdiction over any dispute arising between them (article 6 CIPL); or (iii) the litigation has close links with Belgium, and the introduction of proceedings abroad appears to be impossible, or it could not reasonably be demanded that the claim should be introduced abroad (article 11 CIPL). The enforcement of foreign judgments in Belgium is governed by the Belgian Code of Private International Law "CPIL" (arts. 22 to 25). These articles provide that a foreign judgment will not be recognized where "the jurisdiction of the foreign court was based exclusively on the presence of the defendant or the assets located in the state of such court, but without any direct relation with the dispute." CPIL art. 25(1)(8). The fact that other bases of indirect jurisdiction provide no bases for a Belgian court to refuse to recognize a foreign judgment, there is a plausible gap in favour of foreign courts.</p>

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Brazil</b>	Yes.		According to Brazilian law, a foreign judgment will be recognized if it was rendered by a “competent [foreign] authority.” Case law and legal doctrine indicate that a foreign court is “competent” if it assumed jurisdiction in accordance with the law in the state of origin, and the subject matter is not within the exclusive jurisdiction of the Brazilian courts. See Decree No. 4.657/1942, Art. 15; Superior Court of Justice Resolution No. 09/2005, Art. 5(l), thus creating a plausible gap in favor of foreign courts.
<b>Bosnia and Herzegovina</b>	Yes.		A foreign judgment will be recognized in Bosnian courts on the basis of reciprocity so long as, <i>inter alia</i> , the matter was not within the exclusive competence of a Bosnian court. The absence of any analysis by the Bosnian court of the foreign court’s bases of personal jurisdiction creates a plausible gap in favor of the foreign court.
<b>Bulgaria</b>	No. According to Article 117 of Private International Law Code a foreign judgment will not be recognized if, <i>inter alia</i> , the foreign court or authority did not have jurisdiction according to the provisions of Bulgarian law.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Burkina Faso</b>	Yes.		<p>The assertion of direct jurisdiction in Burkino Faso is governed by articles 998 <i>et seq.</i> of the Code of People and Family. Where foreign citizens are concerned, if the courts of a foreign State are deemed competent to stand in judgment over the actions of Burkino Faso citizens, citizens of that same foreign State will, if they satisfy the same jurisdictional criteria in Burkino Faso, be subject to the jurisdiction of the Burkino Faso courts. Where the dispute involves citizens of Burkino Faso and the issue of jurisdiction cannot be determined through application of the territorial jurisdiction rule, the dispute will nevertheless be subject to the jurisdiction of the Burkino Faso courts where the circumstances of such dispute indicate that this is appropriate and just.</p> <p>According to Articles 993 <i>et seq.</i> of the Code of People and Family, foreign judgments and civil and commercial decrees are only enforceable in Burkino Faso if the judgment was issued by an internationally competent jurisdiction. This criteria will be satisfied where Burkino Faso Courts do not have exclusive subject matter jurisdiction, and the litigation pertains to a matter generally dealt with by the Courts of the State of the place of issuance of the foreign judgment, thus creating a plausible gap in favor of foreign courts.</p>

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Canada	<p>No. In Canada, the basic mandatory requirements for recognition and enforcement of a foreign judgment include a requirement that the issuing court has properly asserted jurisdiction. Indirect jurisdiction is properly exercised where there is a “real and substantial connection” between the subject matter of the litigation and the court being asked to recognize and enforce the judgment. <i>Beals v. Saldanha</i>, [2003] 3 S.C.R. 416; <i>Van Breda v Village Resorts Ltd</i>, [2012] 343 DLR(4th) 577 (holding that jurisdiction may also be based on traditional grounds, the defendant’s presence in the jurisdiction or consent to submit to the court’s jurisdiction, if they are established). This “real and substantial connection” test is also applied by Canadian courts to determine direct jurisdiction. See <i>Breedon v Black</i>, 2012 SCC 19 and <i>Éditions Écosociété Inc. et al. v Banro Corp.</i>, 2012 SCC 18.</p>		
Chile	<p>No. Under Chile’s Civil and Commercial Code of Procedure (Articles 242-245), in the absence of a treaty or reciprocity, a foreign judgment can be only recognized and enforced in Chile, if, <i>inter alia</i>, the judgment comports with Chilean law on jurisdiction.</p>		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
China (Hong Kong)	No. In a common law action for enforcement of a foreign judgment from a non-reciprocal state, the judgment creditor has to prove, <i>inter alia</i> , that the foreign judgment comes from a "competent" court, as determined by the private international law rules applied by the Hong Kong SAR courts.		
China (People's Republic of)	Yes.		Foreign judgments are only enforceable pursuant to a treaty or reciprocity. See PRC Civil Procedure Code (2012), Art. 282. Assuming there is reciprocity, recognition may only be denied where the judgment "contradict[s] the basic principles of the laws of the People's Republic of China [ ]or violates the national, social, and public interest of China." <i>Id.</i> The absence of any analysis by the Chinese court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Colombia</b>	Yes.		According to Articles 606-607 of the Colombian Code of Civil Procedure, a foreign judgment can be recognized so long as, <i>inter alia</i> there is reciprocity and the judgment does not determine property rights located in Colombia or a subject matter within the exclusive jurisdiction of Colombian courts. The absence of any analysis by the Colombian court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.
<b>Costa Rica</b>	Yes.		According to Section 705 of the Costa Rican Code of Civil Procedure, a foreign judgment will be recognized so long as, <i>inter alia</i> , the matter does not fall within the exclusive jurisdiction of Costa Rican courts. The absence of any analysis by the Costa Rican court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.
<b>Croatia</b>	Yes		A foreign judgment will be recognized in Croatian courts on the basis of reciprocity so long as, <i>inter alia</i> , the matter was not within the exclusive competence of a Croatian court. The absence of any analysis by the Croatian court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.



State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Cyprus</b>	Yes.	The Courts of Cyprus will only recognise and enforce a foreign judgment if: (a) the judgment is given by a court of an EU Member State and is enforceable in Cyprus pursuant to the provisions of Regulation (EU) No.2012/2015; (b) the judgment is enforceable pursuant to the provisions of any bilateral or multilateral treaty or convention providing for the reciprocal recognition of judgments; or (c) the judgment is given by a court of the United Kingdom or of a British dominion or protectorate under the Reciprocal Enforcement of Certain Judgments of Commonwealth Countries Law, Cap.10. A judgment not falling into any of the above categories will not be recognised even if it the foreign court had jurisdiction pursuant to the Cypriot rules on international jurisdiction.	
<b>Czech Republic</b>	No. Section 15 of the Czech Law N° 91/2012 on Private International Law states that Czech courts may deny the recognition or enforcement of foreign decision if, <i>inter alia</i> , the foreign court did not have jurisdiction as assessed by the principles of jurisdiction under Czech law, if the subject matter falls within the exclusive jurisdiction of the Czech courts, or if there is no guarantee of reciprocity by the foreign court.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Denmark</b>	Yes.	Foreign judgments from states without a treaty with Denmark are not eligible for recognition in Denmark. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap. That trend may be shifting. One decision in 2001 upheld a non-statutory basis for recognition of an Argentine judgment. See Decision No. U2001.1949Ø. That decision assessed whether the foreign court had jurisdiction under Danish principles of jurisdiction, thereby eschewing any jurisdictional gap.	
<b>Egypt</b>	Yes	Under Articles 296-298 of the Egyptian Civil Procedure Code, foreign judgments may be recognized and enforced in Egypt if the foreign court issuing the judgment had jurisdiction pursuant to its own governing law. While this plausibly creates a gap in favour of the foreign court, there is a pre-condition that the Egyptian courts not have direct jurisdiction over the dispute in which the judgment was entered (Article 298). For these purposes, Egyptian courts may exercise jurisdiction over a defendant who is domiciled in Egypt or where the performance or relevant assets at issue may be found in Egypt. Thus, a foreign judgment against an Egyptian domiciled person may not be fully enforceable in Egypt, even in circumstances where jurisdiction may have been wholly proper in the foreign country. This pre-condition constitutes a narrow gap.	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Estonia</b>	No. Under Article 620 of the Estonian Code of Civil Procedure, "[a] court decision in a civil matter made by a foreign state is subject to recognition in the Republic of Estonia, except in the case where . . . the court which made the decision could not make the decision in compliance with the provisions of Estonian law regulating international jurisdiction."		
<b>Finland</b>	Yes.	Foreign judgments from states without a treaty with Finland are not eligible for recognition in Finland. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>France</b>	Yes.		Pursuant to Articles 14 and 15 of the Civil Code, the jurisdiction of a French court is typically based on the French nationality of either Party. Those articles have a general scope, yet they do not qualify as rules of exclusive jurisdiction. By comparison, Article 509 of the Code of Civil Procedure provides that foreign judgments shall be enforceable in France upon the satisfaction of several conditions, including whether the foreign judge who rendered the judgment had indirect jurisdiction. <i>See Cornelissen v. Avianca</i> , French Supreme Court, 1st Civil Chamber, February 20, 2007, No. 05-14082. “Indirect jurisdiction” is assessed liberally and the foreign court will be deemed to have had jurisdiction as long as the French court does not have exclusive jurisdiction (which is a rare occurrence limited to <i>ratione materiae</i> or <i>ratione voluntatis</i> ), and the dispute is “characteristically connected to the country in which the judge was seized” (which is usually found in practice).
<b>Germany</b>	No. According to Section 328 of the German Code of Civil Procedure, a foreign judgment will not be recognized, <i>inter alia</i> , if the foreign court did not have jurisdiction “according to German law” or if there is no reciprocity.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Ghana</b>	Yes.	Under Section 83 of Ghana’s Courts Act of 1993 (Act 459), a foreign court will be deemed to have had jurisdiction where the defendant appeared voluntarily or agreed to the foreign forum; where he is resident or has a principle place or business; or where the matter at issue relates to a transaction effected through an office present in that jurisdiction. The bases for direct jurisdiction are much broader, and include, <i>inter alia</i> , contract actions governed by Ghanaian law (wherever the contract was executed); breaches of contract committed within Ghana (wherever the contract was executed); torts committed within Ghana; and cases where a foreign person is a necessary or proper party to a case otherwise before the Ghanaian courts. See High Court (Civil Procedure) Rules Order 8, r. 3. None of these bases appear among the bases for indirect jurisdiction.	
<b>Greece</b>	<i>No.</i> Pursuant to Article 323 of the Greek Code of Civil Procedure, a foreign judgment is recognized in Greece if the foreign court had jurisdiction pursuant to Greek law.		
<b>Hungary</b>	<i>No.</i> Pursuant to the Hungarian Enforcement Act, Decree No. 13 of 1979 on Private International Law, a foreign judgment is recognized in Hungary if the jurisdiction of the foreign court is found legitimate under the rules of jurisdiction of Hungarian law.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Iceland</b>	Yes	Foreign judgments from states without a treaty with Iceland are not eligible for recognition in Iceland. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	
<b>India</b>	Yes.		Recognition and enforcement of foreign judgments is provided for under Section 13 of the Code of Civil Procedure, 1908, as amended (the “Civil Code”). That provision states that foreign judgments will be enforced so long as the originating court was one of “competent jurisdiction.” The degree of “competen[ce]” contemplated by section 13 of the Civil Code “is in an international sense”—that is, those “rules [that] are recognised as common to civilised jurisdictions . . . and not merely by the law of foreign State in which the Court [that] deliver[ed] judgment functions.” <i>R. Viswanathan vs Rukn-UI-Mulk Syed Abdul Wajid</i> , 1963 SCR (3) 22. By permitting judgments rendered under any generally recognized principle of jurisdiction, rather than the possibly narrower rules of Indian law, this creates a plausible gap in favor of a foreign jurisdiction.

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Indonesia</b>	Yes.	Foreign court judgments are not enforceable Indonesian in accordance with Article 436(1) of the RV (Reglement op de Rechtsvordering/Civil Procedure Code). Indonesia has not yet become a party to any international convention for the recognition and enforcement of foreign judgements. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	
<b>Ireland</b>	<i>No.</i> Under Ireland’s common law rules on recognizing and enforcing a judgment <i>in personam</i> of a foreign court, to be enforceable, the foreign judgment must be, <i>inter alia</i> , given by a court of competent jurisdiction as defined by Irish rules of private international law. <i>See Rainford v Newell Roberts</i> [1962] I.R. 95, recently endorsed in <i>Flightlease (Ireland) Ltd v Companies Act Judgment</i> [2006] IEHC 193)).		
<b>Israel</b>	<i>No.</i> According to Section 6 of Israel’s Foreign Judgments Enforcement Law of 1958, a foreign judgment will not be recognized in Israel if the judgment was given by a court not competent to give it in accordance with the rules of private international law applicable in Israel.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Italy</b>	<i>No.</i> Pursuant to Art. 64(a) of Italian Law 31 May 1995, no. 218 (Private International Law Reform), a foreign judgment may be recognized in Italy when the foreign judge could hear the dispute according to the principles of jurisdiction of the Italian legal system.		
<b>Japan</b>	<i>No.</i> According to Article 118 of the Japanese Code of Civil Procedure, a foreign judgment will be recognized in Japan provided that “The jurisdiction of the foreign court is recognized under laws or regulations or conventions or treaties.” While this is undefined in the Japanese Civil Code, case law has construed this to mean that indirect jurisdiction will be recognized if it is authorized under the Japanese Code of Civil Procedure. See <i>In re Order of the Hong Kong High Court</i> , Supreme Court, 28 April 1998.		



State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Jordan</b>	Yes.	According to Articles 27 and 28 of the Civil Procedure Code, Jordanian courts can assert jurisdiction on over (1) a defendant who voluntarily submits to the jurisdiction of the Jordanian courts, expressly or implicitly; (2) cases where one or more defendants are domiciled in Jordan; (3) a defendant who elects domicile in Jordan; (4) cases in relation to goods located in Jordan; (5) cases in relation to obligations created or enforced in Jordan; and (6) bankruptcies declared in Jordan. By comparison, Article 7 of Law N° 8/1952 on the Enforcement of Foreign Judgments provides the requirements for non-recognition of a foreign judgment. One of those requirements is that the foreign court “must be competent,” which will be the case only where the defendants carried out their business in, were residents within, or voluntarily submitted to and recognize the jurisdiction of that foreign court. The broader instances of direct jurisdiction creates a (rather narrow) jurisdictional gap	
<b>Kazakhstan</b>	Yes.	Foreign judgments from states without a treaty with Kazakhstan are not eligible for recognition in Kazakhstan. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Kenya	Yes.	Jurisdiction over foreign defendants in Kenyan courts is premised upon service of process, which can occur on mere transient presence in Kenya (even for transactions or acts occurring abroad), <i>see Riddlesbarger v. Robson</i> [1958] EA 375, as well as where, <i>inter alia</i> , the claim concerns a breach of contract made in Kenya or merely governed by Kenyan law. <i>See Karachi Gas Co. Ltd. v. Issaq</i> [1965] EA 42; <i>Nairobi Projectors Services Ltd. v. Kabuleeta</i> [2006] eKLR; <i>Kenya School of Flying v. ACE INA UK Ltd.</i> [2005] eKLR; <i>African Mercantile Co. Ltd. v. Patel</i> [1927-28]11 KLR 69. None of these bases are recognized as adequate jurisdictional bases for an enforceable foreign judgment. <i>See Foreign Judgments (Reciprocal Enforcement Act, Cap 43, § 4(1)</i> . Also, recognition and enforcement of foreign judgments in Kenya is limited to judgments from only eight reciprocating countries. No other foreign judgments will be recognized, thus constituting a complete jurisdictional gap.	
Korea, Republic of	No. According to Article 217 of the Korean Code of Civil Procedure, a foreign judgment will be recognized in Korea if, <i>inter alia</i> , the foreign court had jurisdiction “pursuant to the Acts and subordinate statutes of the Republic of Korea” and there is reciprocity.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Laos</b>	Yes	Courts in Laos will not recognize foreign judgments absent a treaty obligation to do so. See Law on Civil Procedure No. 02/NA (17 May 2004). The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	
<b>Latvia</b>	<i>No.</i> According to Article 637 of the Civil Procedure Law, a foreign judgment will not be recognized in Latvia if, <i>inter alia</i> the foreign court did not have jurisdiction according to the laws of Latvia or a Latvian court had exclusive jurisdiction.		
<b>Lebanon</b>	Yes.		Article 1014 of the Code of Civil Procedure states that Foreign judgements are enforced by the Lebanese courts if the foreign judgment is issued by competent judges in accordance with the law of the country of the court of origin. By approving a foreign court's assertion of personal jurisdiction under the foreign court's laws, Lebanese law creates a gap in favor of the foreign court.
<b>Luxembourg</b>	<i>No.</i> According to Luxembourg case law, a foreign judgment will be recognized in Luxembourg if the foreign court had jurisdiction pursuant to the Luxembourg rules on international jurisdiction.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Malta</b>	<p><i>No.</i> In an enforcement proceeding, conducted pursuant to Sections 826-827 of the Civil Code, a party can request the foreign judgment be set aside on the grounds listed in Section 811 of the civil code. Section 811's grounds include "a plea to the jurisdiction of the court," which is defined in Section 741(a) as a plea that the "action is not one within the jurisdiction of the courts of Malta."</p>		
<b>Mexico</b>	<p><i>No.</i> Pursuant to Sections 564 and 571 of the Federal Code of Civil Procedure, foreign judgments may be enforced on the principles of reciprocity, and a foreign court's jurisdiction shall be recognized in Mexico for the purpose of the enforcement of foreign judgments where jurisdiction to hear the case was made on compatible or analogous grounds to those found in Mexican domestic law, unless it concerns matters which fall under the exclusive jurisdiction of Mexican courts.</p>		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Morocco</b>	No. According to Articles 430, 431, 432 of the Moroccan Code of Civil Procedure (1974) foreign judgments will be recognized and enforced in Morocco so long as, <i>inter alia</i> , the foreign Court which issued it had jurisdiction according to the principles of jurisdiction of the Moroccan legal system.		
<b>Netherlands</b>	No. According to Articles 431 and 985 of the Dutch Code of Civil Procedure, a foreign judgment will not be recognized if the foreign court did not have jurisdiction according to Dutch law.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
New Zealand	Yes.	<p>Foreign judgments may be registered and enforced under the Reciprocal Enforcement of Judgments Act 1934, or at common law if they are for a sum of money, final and conclusive, and New Zealand law recognises the foreign court's jurisdiction over the judgment debtor. New Zealand only recognises the foreign court's jurisdiction if the judgment debtor was a plaintiff or brought a counterclaim; agreed to submit to the court's jurisdiction before proceedings commenced; submitted to the jurisdiction of the court by voluntarily appearing; or was resident in the country of the original court when proceedings were instituted.</p> <p>The bases for proceeding directly against a defendant in a New Zealand court are broader. A party may proceed against a defendant if the defendant is amenable to the jurisdiction of the New Zealand court such as where the defendant is, or is ordinarily domiciled, in New Zealand, or if there is another jurisdictional nexus such as: (i) tortious damage or breach occurred in New Zealand (High Court Rules, r 6.27(2)(a)); (ii) the contract was made in New Zealand, subject to New Zealand law, was to be wholly or part performed in New Zealand or a contractual breach occurred in New Zealand (High Court Rules, rr 6.27(2)(b)-(c)); (iii) when the subject matter is property situated in New Zealand (High Court Rules, r 6.27(2)(e)); (iv) the defendant has submitted to the court's jurisdiction (High Court Rules, r 6.27(2)(k)); or (v) the claim has a real and substantial connection with New Zealand, there is a serious issue to be tried, New Zealand is the appropriate forum, and any other relevant circumstances support assuming jurisdiction (High Court Rules, r 6.28(5)).</p>	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Nigeria</b>	Yes	Under Section 6(2) of Nigeria's Foreign Judgments (Reciprocal Enforcement) Act of 1990, a foreign court will be deemed to have had jurisdiction where the defendant appeared voluntarily or agreed to the foreign forum; where he is resident or has a principle place or business; or where the matter at issue relates to a transaction effected through an office present in that jurisdiction. The bases for direct jurisdiction are much broader, and include, <i>inter alia</i> , contract actions governed by Nigerian law (wherever the contract was executed); breaches of contract committed within Nigeria (wherever the contract was executed); torts committed within Nigeria; and cases where a foreign person is a necessary or proper party to a case otherwise before the Nigerian courts. See Federal High Court (Civil Procedure) Rules Order 13, r. 13. None of these bases appear among the bases for indirect jurisdiction.	
<b>Norway</b>	Yes.	Article 168a of the Norwegian Code of Civil Procedure provides for recognition of foreign judgment in the absence of a treaty, provided that the foreign court based its jurisdiction on a written agreement or an oral agreement confirmed in writing within a reasonable time. The preclusion of all bases of indirect jurisdiction beyond forum selection agreements constitutes a jurisdictional gap.	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Panama</b>	Yes.		According to Articles 178-179 of the Panamanian Code of Private International Law, a foreign judgment will be recognized so long as, <i>inter alia</i> , the foreign country recognizes and enforces Panamanian judgments and the matter does not fall within the exclusive jurisdiction of Panamanian courts. The absence of any analysis by the Panamanian court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.
<b>Portugal</b>	Yes.		Article 978 of Portugal's code of Civil Procedure states that, absent a treaty, foreign judgments relating to private rights will only be recognized pursuant to the factors listed in Article 980 which include, <i>inter alia</i> , that the foreign tribunal's jurisdiction must not have been obtained by fraud or have been exercised over a matter within the exclusive jurisdiction of Portuguese courts. The absence of any analysis of the foreign courts jurisdictional bases creates a gap in favor of the foreign court.



State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Romania	Yes.		Romanian courts will recognize foreign judgments so long as they are final and are made by the competent court pursuant to the law of the other state. (Article 1095 of the Code of Civil Procedure ("RCCP")). By analyzing the jurisdictional bases of the foreign court based on the foreign court's law, this creates a gap in favor of the foreign court.

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Russian Federation</b>	<p>Yes.</p>		<p>According to Article 241(1) of the Arbitration Procedure Code, foreign judgments can be recognised and enforced in the Russian Federation, if recognition and enforcement of such judgments are provided for by an international treaty to which the Russian Federation is a party or federal law. Russian courts are divided on whether this is the exclusive means of enforcing a foreign judgment (which would create a gap in favour of national courts), or whether reciprocity and comity provide an additional bases for doing so. The latter approach seems to be the trend. See <i>Rentpool B.V. v. OOO Podyemnye Tekhnologii</i> (2009) (enforcing a Dutch judgment on the basis of reciprocity and comity); <i>Oceanic San Shipment N.V. v. Investflot LLC</i> (2012) (same). Either way, however, Article 244 of the Arbitration Procedure Code provides that a foreign judgment will not be recognized if, <i>inter alia</i>, the consideration of the case was within the exclusive subject matter jurisdiction of a court in the Russian Federation and the execution of the foreign judgment would be contrary to the public policy of the Russian Federation. If judgments from non-treaty countries are enforceable in Russia, the absence of any analysis by the Russian courts of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court.</p>

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Saudi Arabia	Yes		<p>The Saudi Enforcement Law (issued by Royal Decree No. M/53 of 13 Sha'ban 1433 Hijri) states that the competent Saudi court may enforce foreign judgments on the principles of reciprocity provided that the foreign court issuing the judgment had jurisdiction pursuant to the international rules of jurisdiction set out in its regulations. So, at least as a matter of law, this provision creates a theoretical gap in favour of the foreign court.</p> <p>However, recognition may be denied where (i) a Saudi court had jurisdiction to hear the dispute that was the source of the foreign judgment, and (ii) the foreign judgment violates the public laws of the Kingdom, viz. Islamic Shari'ah law. In certain circumstances, this provision could create a parallel gap in favour of the Saudi courts.</p>

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Seychelles</b>	Yes.	Under Article 6(2)-(3) of Seychelles' Foreign Judgments (Reciprocal Enforcement) Act, a foreign court will be deemed to have had jurisdiction where the defendant appeared voluntarily or agreed to the foreign forum; where he is resident or has a principle place or business; or where the matter at issue relates to a transaction effected through an office present in that jurisdiction. The bases for direct jurisdiction are much broader, and include, <i>inter alia</i> , suits for "breach or alleged breach [of contract occurring] within the jurisdiction of any contract wherever made," and where a person is a "necessary or proper party" to a suit already pending in the courts. Section 48 of the Civil Procedure Act None of these bases appear in the list of acceptable bases of a foreign judgment.	
<b>Slovakia</b>	No. Section 63 of the Slovak Law on International Private and Process N° 97/1963, as amended by the Law N° 589/2003 ("IPP"), governs the recognition and enforcement of foreign judgments. Foreign judgments may be recognized in the Slovak Republic unless the subject matter falls under the exclusive jurisdiction of Slovak courts ( <i>e.g.</i> where property in dispute is situated in its territory) or "if in application <i>mutatis mutandis</i> of the Slovak provisions on jurisdiction the foreign authority would have had no jurisdiction in the matter."		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Spain	Yes.		<p>If the judgment is from a non-EU member, and in the absence of a treaty or reciprocity, Art. 954 of the Code of Civil Procedure provides that foreign judgments will be enforceable in Spain if, <i>inter alia</i>, the following requirements are met: (a) that the action was in personam; (2) that it was not a default judgment; (3) that the obligation to comply with the judgment be legal in Spain; (4) that the foreign judgment meets the Spanish requirements to be considered authentic in Spain. The Supreme Court's case law has also developed a flexible regime applicable to indirect jurisdiction, as another condition to the recognition of a foreign judgment from a non-EU or non-Treaty state. According to this case law, a foreign judgment will be recognised and enforced in Spain if there was a "reasonable connection" between the courts of the State of origin and the dispute. Recently, the Ministry of Justice has elaborated a Draft of Act on Cross-border Cooperation in Civil and Commercial Matters, which codifies that case law, and states (at article 46) that "A foreign judgment shall not be recognised:... c) when it has decided on a subject matter which falls within the exclusive jurisdiction of Spanish courts or, in other cases, if the jurisdiction of the court of origin was not based on a reasonable connection with the dispute. This reasonable connection is deemed to exist if the jurisdiction of that court was based on a criterion equivalent to those laid down by the Spanish rules on direct jurisdiction." By implicitly endorsing bases of jurisdiction that could fall beyond Spanish rules for direct jurisdiction, there is a plausible gap in favour of foreign courts.</p>

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Sri Lanka</b>	Yes.	In Sri Lanka, the treatment of foreign judgements are governed by the Reciprocal Enforcement of Judgements Ordinance No. 41 of 1921 and the Enforcement of Foreign Judgements Ordinance No. 4 of 1937, which calls for the recognition and enforcement of judgments obtained in the United Kingdom and other parts of Her Majesty's realms and territories, or in countries which accord reciprocal treatment to judgments given in Sri Lanka. A list of these countries is maintained by the Minister by an Order published in the Gazette. No other foreign judgments will be recognized, thus constituting a complete jurisdictional gap.	
<b>Suriname</b>	No. According to Article 306 of the Suriname Code of Civil Procedure, a foreign judgment will not be recognized if the foreign court did not have jurisdiction according to Suriname law.		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Sweden	Yes.	<p>Foreign judgments from states without a treaty with Sweden are not eligible for recognition in Sweden. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.</p> <p>Despite this lack of statutory authorization, Swedish judicial decisions have recognized foreign judgments in the absence of a treaty, provided that the foreign court based its jurisdiction on a written agreement. <i>See The Vakis Case</i>, N.J.A. 1973, p. 628. Even considering this decision, failure to recognize all bases of direct jurisdiction beyond forum selection agreements still constitutes a jurisdictional gap.</p>	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Switzerland</b>	<p><i>No.</i> Under Article 25 of the Swiss Federal Statute of Private International Law, “[a] foreign decision shall be recognized in Switzerland . . . [i]f the judicial or administrative authorities of the State in which the decision was rendered had jurisdiction.” Articles 26 and 149 set forth a number of indirect jurisdictional basis in general civil and commercial matters that largely mirror the direct jurisdictional bases found in articles 5, 6, 8, 112, 113 and 129 of the same Statute. While there may exist some jurisdictional gaps with respect to specific subject matters that are defined in the code (<i>viz.</i> trusts, securities, consumer and employment contracts, insurers and real property), those subject matter gaps fall beyond the scope of this study</p>		
<b>Taiwan</b>	<p><i>No.</i> According to Article 402 of the Taiwanese Code of Civil Procedure, a foreign judgment will not be recognized if the foreign court did not have jurisdiction “according to Taiwanese law.”</p>		



State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Thailand</b>	Yes	There are no provisions of the Civil Procedure Code or the Conflict of Laws Act BE 2481 that govern the recognition and enforcement of foreign judgments. Accordingly, foreign judgments from states without a treaty with Thailand are not eligible for recognition in Thailand. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	
<b>Tunisia</b>	Yes.		According to Article 11 of the Tunisian Code of Private International Law, a foreign judgment will be recognized under bases that do not relate to the indirect jurisdiction of the rendering court. The absence of any analysis by the Tunisian court of the foreign court's bases of personal jurisdiction creates a plausible gap in favor of the foreign court..
<b>Turkey</b>	Yes.		In the absence of a treaty or reciprocity, Turkish courts will recognize a foreign judgment if <i>inter alia</i> , the foreign court had personal jurisdiction under its own laws. By approving a foreign court's assertion of jurisdiction under the foreign court's laws, Turkish law creates a gap in favor of a foreign court

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Uganda</b>	Yes	Under Section 5(2)(c) of Uganda’s Foreign Judgments (Reciprocal Enforcement) Order of 2002, a foreign court will be deemed to have had jurisdiction where the defendant appeared voluntarily or agreed to the foreign forum; where he is resident or has a principle place or business; or where the matter at issue relates to a transaction effected through an office present in that jurisdiction. The bases for direct jurisdiction are much broader, and include, <i>inter alia</i> , contract actions governed by Ugandan law (wherever the contract was executed); breaches of contract committed within Uganda (wherever the contract was executed); torts committed within Uganda; and cases where a foreign person is a necessary or proper party to a case otherwise before the Ugandan courts. See Civil Procedure Rules Order V, r. 22. None of these bases appear among the bases for indirect jurisdiction.	
<b>Ukraine</b>	Yes.		Under Article 396 of the Ukrainian Code of Civil Procedure, the enforcement of foreign judgments may be denied, <i>inter alia</i> , if there is no reciprocity (although reciprocity is presumed), if Ukrainian courts have exclusive subject matter jurisdiction over the case (as determined by reference to Article 77 of the Ukrainian International Private Law) or if the subject matter of the case is not justiciable under the laws of Ukraine. The absence of any analysis by the Ukrainian courts of the foreign court’s bases of personal jurisdiction creates a gap in favor of the foreign court

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>United Arab Emirates</b>	Yes.	<p>Under Article 235 of the UAE Civil Procedure Law, foreign judgments may be recognized and enforced in the UAE if the foreign court issuing the judgment had jurisdiction pursuant to its governing law. However, even if that test is satisfied, a foreign judgment might not be recognised and enforced in the UAE if the UAE courts have exclusive jurisdiction under the Civil Procedure Law or could have had “direct” jurisdiction over the dispute in which the judgment was entered. (Article 235(2)(a)). For these purposes, “direct” jurisdiction may be interpreted broadly by the UAE Courts, who may exercise jurisdiction over a defendant who is domiciled in the UAE or where the performance or relevant assets at issue may be found in the UAE. In such circumstances, the UAE courts may rehear the underlying case on the merits and issue an order in accordance with UAE law. Thus, a foreign judgment relating to such a defendant may not be fully enforceable in the UAE, even in circumstances where jurisdiction may have also been wholly proper elsewhere.</p>	
<b>United Kingdom of Great Britain and Northern Ireland</b>	Yes.	<p>English courts have direct jurisdiction under the common law in three situations: (1) where the Defendant submits to the jurisdiction; (2) where the Defendant is validly served with process by virtue of its presence, place of business, branch, corporate registration in the UK; or (3) where the Defendant is served abroad. On the last point, this may be authorized where, <i>inter alia</i>: (a) the claim is for a remedy against a person domiciled in England and Wales; (b) the claim is for an</p>	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
		<p>injunction ordering the defendant to do or refrain from doing something in England and Wales; (c) where a second person is a proper or necessary defendant to a claim against a first defendant, e.g. joint debtors; (d) an interim remedy is sought in support of foreign proceedings; (e) where a contract was made in England and Wales, by or through an agent trading or residing in England and Wales, or where the contract is governed by English law or contains a choice of English courts; (f) the claim is for breach of contract committed in England and Wales, where the relevant performance was required to be done in England and Wales under the terms of the contract (g) the claim is in tort and the damage was sustained in England and Wales, or resulted from an act committed within England and Wales (See Civil Procedure Rules (“CPR”) Part 6 and Practice Direction (“PD”) 6B). The law in Northern Ireland is substantively the same.</p> <p>By contrast, the recognition of a foreign judgment under the common law can only occur where, <i>inter alia</i>, the judgment debtor (a) was present in the foreign jurisdiction at the time proceedings were instituted; (b) was the claimant or the counter claimant; (c) voluntarily submitted to the jurisdiction of the foreign court; or (d) previously agreed by contract to submit to that jurisdiction. Similar indirection jurisdictional standards appear in the Foreign Judgments (Reciprocal Enforcement) Act of 1933, which applies only to judgments from reciprocating countries . In that statute, though, presence is specifically defined to include residence, principle place of business, or an office in the foeign forum (provided that the</p>	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
		<p>case concerns a transaction effected through that office). This Act applies in Northern Ireland and Scotland.</p> <p>In both cases, this is a narrower list than that governing direct jurisdiction, leading to a jurisdictional gap in favor of the UK courts.</p>	
<p><b>United States of America</b></p>	<p><i>No.</i> In the United States, the test of personal jurisdiction applied for purposes of recognition and enforcement of a foreign judgment is the same as, and co-extensive with, the test for direct jurisdiction over a person. Accordingly, a foreign judgment will be eligible for recognition and enforcement if the court of origin could have exercised jurisdiction over the defendant on a basis of jurisdiction available in the United States.</p>		

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
<b>Uruguay</b>	Yes.		Article 539 of the General Code of Procedure provides that foreign sentences will be recognized and enforced in Uruguay if, <i>inter alia</i> : the foreign tribunal had jurisdiction, except matters where Uruguayan courts would have exclusive jurisdiction. While Article 539 does not specify how jurisdiction is determined, Article 537.2 states that “the judicial nature of the foreign judgment and the subject matter” will be assessed according the law of the foreign jurisdiction, which suggests that the jurisdictional bases of the rendering court will also be assessed according to the foreign court’s law.
<b>Uzbekistan</b>	Yes	Foreign judgments from states without a treaty with Uzbekistan are not eligible for recognition in Uzbekistan. The absence of <i>any</i> proper statutory bases of indirect jurisdiction creates a complete jurisdictional gap.	

State	Identification of a Jurisdictional Gap	Jurisdictional Gap Favoring National Courts	Jurisdictional Gap Favoring Foreign Courts
Zambia	Yes	<p>Under Section 6(2)(c) of Zambia’s Foreign Judgments (Reciprocal Enforcement) Act of 1937, a foreign court will be deemed to have had jurisdiction where the defendant appeared voluntarily or agreed to the foreign forum; where he is resident or has a principle place or business; or where the matter at issue relates to a transaction effected through an office present in that jurisdiction. The bases for direct jurisdiction are much broader, and include, <i>inter alia</i>, contract actions governed by Zambian law (wherever the contract was executed); breaches of contract committed within Zambia (wherever the contract was executed); torts committed within Zambia; and cases where a foreign person is a necessary or proper party to a case otherwise before the Zambian courts. See High Court Rules Order X, r. 15. None of these bases appear among the bases for indirect jurisdiction.</p>	