

**CONFERENCE: CROSS-BORDER ENFORCEMENT OF JUDGMENTS.
AN AUSTRALIAN, UK AND GLOBAL PERSPECTIVE**

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Talking points

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Introductory Remarks

- I wish to express my gratitude to the organizers of this conference for the having invited me to deliver this speech, and I also wish to thank the Hon. Justice R. French for his inspiring and stimulating presentation.
- In his presentation, Justice French has effectively depicted how the questions of registration and enforcement of foreign judgments prove crucial with a view to effective access to justice.
- I am pleased to report that the recognition and enforcement of foreign judgments in civil and commercial matters is a core issue in the normative activity undertaken by the Hague Conference on Private International Law, such an effort being embodied namely in the so-called "Judgments Project".

Judgments Project – Phase I + Choice of Court Convention

- The origins of the Judgments Project go back to 1992 when a proposal was made to undertake work on jurisdictional bases and the recognition and enforcement of judgments in civil and commercial matters.
- Between 1992 and 2001, useful progress was made which resulted in a draft mixed convention, on both jurisdiction and recognition and enforcement of foreign judgments. However, a number of important areas remained where consensus could not be reached.
- The Hague Conference then decided to focus on the areas for which it seemed probable that a consensus-based instrument could, in fact, be achieved. As a result, work concentrated on creating an instrument dedicated to ensuring the effectiveness of choice of court agreements between parties to international B2B transactions.
- With the benefit of the previous 10 years of work, the *Hague Convention of 30 June 2005 on Choice of Court Agreements* was concluded. I am proud to say that the Convention came into force on 1 October 2015 for Mexico and the European Union (except Denmark), and that several other Member States of the Hague Conference are in the process of undertaking active internal consultations and studies with a view to

ratifying it.

Judgments Project – Phase II

- Encouraged by these positive reactions and results, in 2011 the Hague Conference agreed to consider the feasibility of a new global instrument which should be a complementary convention to the Choice of Court Convention, and the following year, the Council approved two mandates for further work on the Judgments Project:
 - on the one hand, it established a Working Group to prepare proposals on the recognition and enforcement of judgments, including jurisdictional filters, i.e., indirect grounds of jurisdiction.
 - on the other hand, it tasked a second group, the so-called Experts' Group, with further study and discussion on the desirability and feasibility of making provisions in relation to jurisdiction.
- In 2013, subsequent to extensive consultations, it was recommended that the work of the Working Group be advanced first and that the discussions of the Experts' Group be resumed at a later stage.
- Since 2013, the Working Group has met on four further occasions, and I am pleased to inform you that three weeks ago, during its fifth meeting, the Working Group has completed its work on a proposed draft text on the recognition and enforcement of foreign judgments in civil and commercial matters.
- The proposed draft text counts 15 Articles. It provides for bases for recognition and enforcement, and it sets out the sole grounds on which recognition and enforcement of foreign judgments may be refused. Such grounds may be summarized as follows:
 - the foreign judgment was rendered in violation of the right to defense and of due process;
 - the judgment for which recognition is sought is in contrast with the public policy of the State addressed;
 - the judgment was rendered in breach of a choice of court agreement;
 - the judgment is inconsistent with a judgment rendered in the requested State in a dispute between the same parties; and
 - the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action.
- In principle, the proposed draft text does not prevent recognition and enforcement of judgments in a Contracting State under national law or under other treaties.
- Its scope extends to civil and commercial matters, including consumer and employment contracts, as well as IP rights.
- The Working Group has recommended to the Council that the proposed draft text be

submitted for consideration to a Special Commission to be held, if possible, in June 2016. The Council is scheduled to meet in March next year, at which point the decision of submitting the text to a Special Commission will hopefully be made.

- Moreover, as regards the Experts' Group activity, the Working Group has recommended it be resumed soon after the Special Commission has drawn up a draft Convention.

Concluding Remarks

- In order for access to justice to be meaningful, a judgment that is rendered by the relevant court must be capable of effective recognition and enforcement. This is a reasonable expectation of the parties to a dispute, and it is precisely the objective of this future instrument.
- Moreover, by enhancing legal certainty and reducing costs and uncertainties associated with cross-border dealings and disputes, the future instrument – as is the case with the Choice of Court Convention – promotes the facilitation of trade and investment, thus contributing to economic growth.
- Overall, the outputs of the Judgments Project carry great prospective benefits for the international legal community and, on a wider spectrum, for the global economic actors.
- Accordingly, the Hague Conference and its Members look forward with much anticipation to the further developments of the Judgments Project, both from the standpoint of additional ratifications of the Choice of Court Convention and from the standpoint of the preparation and adoption of a future convention on the recognition and enforcement of foreign judgments in civil and commercial matters.
- I look forward to keeping you informed on these further developments. I thank you for your kind attention, and welcome your questions and comments.