

**Conference on *International Litigation in the Asia Pacific*  
Wuhan, 23 - 24 September 2013**

**QUESTIONNAIRE ADDRESSED TO STATES PARTICIPATING IN THE ASIA PACIFIC  
REGIONAL EVENT ON INTERNATIONAL LITIGATION**

The purpose of the Questionnaire is to collect information from States regarding the recognition and enforcement of foreign judgments and issues of international jurisdiction in the Asia Pacific region. This information will be used by the Permanent Bureau of the Hague Conference to create a country profile for each State that will assist delegates during the round table discussion session on the first day of the Conference. It is also hoped that the detailed information in the responses to this Questionnaire may be of use to participants beyond this conference.

The concept for the round table discussion session stems from the work the Permanent Bureau is currently undertaking on two key aspects of private international law in cross-border litigation: international jurisdiction and the recognition and enforcement of foreign judgments. A detailed chronology to the background of the work undertaken by the Hague Conference in this area can be located on the website of the Hague Conference < [www.hcch.net](http://www.hcch.net) >, under "Specialised Sections", then "Judgments Project".

The Questionnaire has two parts. Part I contains questions regarding the recognition and enforcement of foreign judgments and Part II contains questions on jurisdictional issues in international litigation. Please note that the Permanent Bureau has used the same terminology in the Questionnaire as that which was used in the two detailed notes that the Permanent Bureau recently prepared for the work being undertaken in this area. These notes identify the issues for consideration in the study of the recognition and enforcement of foreign judgments and jurisdiction in international litigation. For more information on these two topics and for a contextual background to the Questionnaire, please refer to these two notes which are located on the Judgments Project webpage listed above. The notes are titled, "Annotated Checklist of Issues to be discussed by the Working Group on Recognition and Enforcement of Judgments" (Note 1) "Issues Paper on Matters of Jurisdiction including Parallel Proceedings" (Note 2). A glossary of the terminology used is also located on the Judgments Project webpage, titled Annex I: Glossary to the Annotated Checklist.

The Permanent Bureau would very much appreciate receiving your response to this Questionnaire by 2 September 2013. Responses should be sent by e-mail to [secretariat@hcch.net](mailto:secretariat@hcch.net) with the following heading and indication in the subject field: "Questionnaire concerning international litigation – [name of State]". Your co-operation in responding to this Questionnaire is very much appreciated and will greatly assist during the round table discussion session.

**Identification (For follow-up purposes)**

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## **PART I – RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION**

**NOTE:** If your State has a non-unified legal system (*i.e.*, two or more systems of law which apply in different territorial units), and the information is available, please indicate the jurisdiction/s referred to in your answers.

1. Is your State a party to any bilateral and/or multilateral treaties and/or agreements that govern the recognition and enforcement of foreign judgments?

YES

NO

If yes, please specify.

As for multilateral treaties:

1) The Convention on the Recognition and Enforcement of the Decisions Relating to Maintenance Obligations Towards Children, done at the Hague on 15 April 1958; and

2) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.

As for interregional agreements:

1) The Agreement on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between Mainland China and Macau Special Administrative Region, signed in Macao on 28 February 2006;

2) The Agreement on the Reciprocal Recognition and Enforcement of Arbitral Awards between the Mainland China and the Macau Special Administrative Region, signed in Beijing on 30 October 2007; and

3) The Agreement on the Reciprocal Recognition and Enforcement of Arbitral Awards between the Macau Special Administrative Region and the Hong Kong Special Administrative Region, of 7 January 2013.

2. Does your State have rules of national law that govern the recognition and enforcement of foreign court judgments in your State? (*i.e.*, legislation or case law)

YES

NO

If yes, please specify.

Articles 1199 to 1205 of the Civil Procedure Code (CPC) provide for the special procedure of reviewing and confirming decisions rendered by courts or arbitrators from outside Macao.

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

Please specify.

According to Articles 36 (13) of Law 9/1999, Law on the Basis of the Organization of the Judiciary, as amended by Law 9/2004, the Court of Second Instance of the Macau SAR is the competent Court for reviewing and confirming decisions, including those rendered by courts or arbitrators from outside Macao.

4. Are there specific conditions that need to be met in order for a judgment to be recognised and enforced by a court in your State?

- YES  
 NO

If yes, under what circumstances (*e.g.*, the jurisdiction of the foreign court must be recognised, the respondent to the application for recognition and enforcement must have assets in your State, the judgment must be a monetary judgment that is final and conclusive)?

According to Article 1199 (1) of the CPC, unless regulated otherwise in an international convention applicable in Macau, in an agreement on judicial cooperation or in a special law, decisions on private rights (*i.e.* on civil and commercial matters) rendered by courts or by arbitrators from outside Macau are only effective in Macau after being reviewed and confirmed.

Thus, for the decision rendered by a court from outside Macau be confirmed, it is necessary that the following cumulative requisites, set out in Article 1200 (1) of the CPC, are fulfilled:

a) there must be no doubts as to the authenticity of the document that contains the decision or as to the intelligibility of the decision;

b) the decision should have acquired *res judicata* force according to the laws of the foreign jurisdiction;

c) that it was rendered by a court whose jurisdiction (competence) was not provoked by fraud to the law and does not concern a subject matter within the exclusive jurisdiction (competence) of the Macau courts;

d) the same case is not pending before a court in Macau (*lis pendens*) or has not been tried (*res judicata*) by a Macau court, except if it was first brought before the court from outside Macau (foreign court);

e) the respondent must have been properly summoned according to the law of the court of origin, and in the proceedings the principles of due process of law and equality of the parties have been observed;

f) that does not involve a decision whose confirmation leads to a result which is manifestly incompatible with the public order of Macau.

If the aforesaid requisites are fulfilled, the decision on the proceedings will be attributed validity and formal effectiveness, according to the laws in force in Macau.

Paragraph 2 of the same Article 1200 of the CPC, provides that the above mentioned requirements shall apply to the arbitral award, insofar as it can be applied.

5. Can a court in your State refuse to recognise and enforce a foreign court judgment that otherwise meets the specific conditions identified in Part I question 4?

- YES  
 NO

If yes, under what conditions (*e.g.*, procedural fairness, lack of proper notice to the defendant, an inconsistent foreign or domestic judgment, parallel domestic proceedings)? In addition, are those grounds for refusal raised on the court's own motion or by the party opposing the recognition and enforcement application?

According to Article 1204 of the CPC, the court shall ex officio examine whether the conditions specified in Article 1200 (a) and (f) are fulfilled; it shall deny also ex officio the confirmation whenever, through the examination of the proceedings or through information obtained in the course of performing its functions, finds that one of the conditions required by Article 1204 (b), (c), (d) and (e) is not fulfilled.

Furthermore, according to Article 1202 (1) and (2) of the CPC, that sets out the grounds for contesting the request for confirmation, the request for confirmation may only be contested on grounds of lack of any of the requisites specified in Article 1200 or if the reasons for the review of a final decision stated in Article 653 (a), (c) and (g) occur (i.e. when it demonstrate, by final judgment, that the decision was rendered by malfeasance, graft or corruption of any judge or judges who intervened in the decision; when the submission of a document which the party had no knowledge or that the party had not been able to use in the process in which the decision was rendered, whereas the document is sufficient, per se, to modify the decision in the sense most favorable to the defeated party; and when is contrary to another decision that constitutes res judicata to the parties, formed earlier.).

Moreover, this Article also provides that if the decision was rendered against a Macau resident, the confirmation may also be contested on grounds that the result of the proceedings would have been more favourable to that person if the foreign court had applied the Macau substantive law, when the issue should have been decided by this law, according to the Macau conflict of laws rules.

6. Is recognition and enforcement of a foreign judgment subject to a special procedure before a court in your State?

YES

NO

If yes, please describe the procedure.

As mentioned in Part I question 2, Articles 1199 to 1205 of the CPC provide for the special procedure of review of foreign sentences.

According to Article 1201 (1) and (2) of the CPC, the document containing the decision to be reviewed is submitted together with the application initiating the proceedings; the party opposing confirmation is summoned to contest within 15 days. The party requesting confirmation may reply to the objection within 10 days following the notification for the submission of the objection.

As referred in response to question 5, Article 1202 (1) and (2) of the CPC sets out the grounds for contesting the request for confirmation.

As provided in Article 1203 (1), (2) and (3), after the written pleadings have been submitted and the research that the reporting judge considers necessary has been done, the file is entrusted to the Procuratorate. If the Procuratorate to raise any issue, the parties may file an opposition within 10 days. The trial shall take place according to the procedure for ordinary appeal to the Court of Second Instance.

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

Judgments entered in default  
Comments.

Provisional and protective measures  
Comments.

Non-money judgments  
Comments.

Judgments awarding non-compensatory damages  
Comments.

Other.

If other, please specify.

Please refer to response to Part I question 4.

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

YES

NO

If yes, under what circumstances.

Article 1205 (1) of the CPC provides that the decision of the Court of Second Instance on the review and confirmation of a foreign sentence may be appealed to the Court of Final Appeal. It is an ordinary appeal that follows the general terms established in Article 583 and the following articles of the CPC.

Furthermore, Article 1205 (2) of the CPC specify that even if it is not a principal party in the proceeding, the Procuratorate may appeal a court decision on the grounds of breach of Article 1200 (c), (e) and (f).

9. What is the frequency of applications for recognition and enforcement of foreign court decisions per year? It is appreciated that this information may not be readily available in your Ministry however; such information may possibly be obtainable from the courts in your State.

0-5

5-10

10 – 20

more than 20.

Any comments.

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

0-5

5-10

10 – 20

more than 20.

Any comments.

## PART II – JURISDICTIONAL REQUIREMENTS

1. Is your State a party to any bilateral and/or multilateral treaties and/or agreements that govern issues of jurisdiction in international litigation?

YES

NO

If yes, please specify.

2. Does your State have rules of national law that govern issues of jurisdiction in international litigation in your State? (*i.e.*, legislation or case law)

YES

NO

If yes, please specify.

**The provisions on jurisdiction in international litigation in the Macau SAR are contained in Articles 15 to 20 of the Civil Procedure Code of Macau.**

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

YES

NO

Comments

4. In which of the following situations would the courts in your State have jurisdiction:

where the defendant voluntarily submits to the jurisdiction

Comments

Please refer to the comments related with Article 29 of the CPC below.

where the defendant is domiciled or resides in your State

Comments

This is a subsidiary criteria that is provided in Article 17 (a) and (c) of the CPC, respectively, either the defendant is a natural or a legal person.

where the defendant carries out regular commercial activity in your State

Comments

This is also covered by the provisions of Article 17 (a) and (c) of the CPC.

Therefore it also applies if the defendant does not reside in the Macao SAR but carry out a regular professional activity and/or has his professional domicile in the Macao SAR, provided that the action refers to relationships resulting from this circumstances.

where the contract is performed or there is a breach of contract in your State  
Comments

The Macau courts have jurisdiction on actions to require compliance with obligations, compensation for non-compliance or defective compliance or termination of the contract for failure to comply, when the obligation should be fulfilled in Macau or the defendant is domiciled here (Article 16 (a) of the CPC).

where a contract is concluded executed between parties in your State  
Comments

where the parties to the dispute have designated the courts of your State for the purpose of deciding disputes between them?  
Comments

According to Article 29 of the Civil Procedure Code, the parties are free to stipulate the pertinent jurisdiction to settle any dispute that may arise, if the legal relationship is connected to more than one legal system, provided that such choice:

1. Refers to a dispute related with available rights;
2. Is accepted by the laws of the chosen jurisdiction;
3. Is related to a significant interest of the parties or of one of the parties, since it does not imply an excessive inconvenient to the other party;
4. Does not fall on a subject which is of the exclusive jurisdiction of the Macau courts;
5. Results from a written provision or is confirmed in written, being the choice of the pertinent jurisdiction expressly mentioned.

where an injury occurs to a person as the result of a tortuous act occurring in your State  
Comments

Article 15 (a) of the CPC provides that the Macau SAR courts have jurisdiction when the act serving the cause of action in an action, or any acts that integrate it, occur in Macao.

where damage occurs to tangible property as the result of a tortuous act occurring in your State  
Comments

Article 15 (a) of the CPC as described above.

where the defendant does not reside in your State, but the defendant's immovable property is held in your State  
Comments

The Macao SAR courts are considered to have exclusive jurisdiction on actions relating with rights in rem in immovable property located in Macao (Article 20 (a) of the CPC).

According to Article 16 (b) of the CPC, the Macao SAR courts also have jurisdiction on actions relating to an immovable property located in Macao whenever involve personal rights of enjoyment (e.g. the rights of the tenant), eviction, pre-emption rights and "specific performance" of promissory contract.

Other

Please specify

The Macao SAR courts are considered to have exclusive jurisdiction on actions relating with bankruptcy and insolvency proceedings of companies with head office in Macao (Article 20 (b) of the CPC).

5. Is the nature of the above-mentioned grounds such that without these present a court is not entitled to hear a case?

YES

NO

Comments.

Article 15 (c) of the CPC provides that the Macao courts have jurisdiction where a right can not become effective except by means of an action commenced before a court in Macau provided that there is a ponderous element of personal or real connection between the proposed action and Macao.

6. In which of the following situations would a court, otherwise having jurisdiction as described in part II question 4, decline to exercise its jurisdiction in your State:

where there are identical proceedings (proceedings involving the same parties and the same cause of action) occurring in another State's courts

Please indicate the relevant source of law and any comments.

Articles 413 and 414 and Articles 416 and 417 of the CPC provide for the dilatory exceptions of lis pendens and res judicata.

The court shall know ex officio if the same case is pending before a court in Macau (lis pendens) and if a same case has already been tried by a Macau court and does no longer admit an ordinary appeal. The lis pendens and the res judicata preclude the court to deal with the merits of the case and have as consequence the dismissal of the proceedings.

where there are related proceedings (those proceedings that do not have identical parties and causes of action but have related causes of action and parties)

Please indicate the relevant source of law and any comments.

where the court determines that it is an inappropriate forum

Please indicate the relevant source of law and any comments.

where it is in the interests of justice to do so

Please provide any comments

other

Please indicate.



