

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

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

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

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

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

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

Identification (For follow-up purposes)

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PART I – RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION

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

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

YES

NO

If yes, please specify.

Reciprocal legislative arrangements with some other jurisdictions

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.

There is a statutory registration scheme for foreign judgments under the Foreign Judgments (Reciprocal Enforcement) Ordinance, Chapter 319 of the Laws of Hong Kong ("Cap 319") to facilitate reciprocal recognition and enforcement of judgments on the basis of reciprocity. With respect to foreign judgments that may not be registered under Cap 319, they may be enforced by common law.

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

Please specify.

Court of First Instance of the High Court

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)?

A judgment creditor, with a judgment from a jurisdiction designated under Cap 319 may apply to the Court of First Instance, *ex parte*, for registration of the judgment provided that the relevant requirements as set out in Cap 319 are met.

In a common law action for enforcement of a foreign judgment, the judgment creditor has to prove that the foreign judgment is a final judgment conclusive upon the merits of the claim. Such a judgment must be for a fixed sum and must also come from a "competent" court (as determined by the private international law rules applied by the Hong Kong SAR courts).

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?

The judgment debtor may apply to the court to set aside the registration on a number of grounds within a period of time in accordance with the relevant provisions of Cap 319. The defences that are available to a defendant in a common law action brought on the basis of a foreign judgment include lack of jurisdiction, breach of natural justice, fraud and contrary to public policy.

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.

Registration procedure under Cap 319 or summary judgment procedure under common law.

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.

Monetary civil judgments

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

- YES
 NO

If yes, under what circumstances.

Under the normal rules governing appeal against a lower court's decision

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.

THE ABOVE IS THE AVERAGE FIGURE PER YEAR FROM 2000-2012

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

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

Any comments.

THE ABOVE IS THE AVERAGE FIGURE PER YEAR FROM 2000-2012

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.

Apart from the reciprocal arrangements mentioned in question 1 in Part I, there are no separate agreements or arrangements on the issue of jurisdiction

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.

No specific rules governing issues of jurisdiction in international litigation

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

YES

NO

Comments

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

where the defendant voluntarily submits to the jurisdiction

Comments

where the defendant is domiciled or resides in your State

Comments

so long as the defendant may be properly served with originating process in Hong Kong

where the defendant carries out regular commercial activity in your State

Comments

so long as the defendant may be properly served with originating process in Hong Kong

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

Comments

so long as the defendant may be properly served with originating process in Hong Kong

where a contract is concluded executed between parties in your State

Comments

so long as the defendant may be properly served with originating process in Hong Kong

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

Comments

so long as the defendant may be properly served with originating process in Hong Kong

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

Comments

so long as the defendant may be properly served with originating process in Hong Kong

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

Comments

so long as the defendant may be properly served with originating process in Hong Kong

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

so long as the defendant may be properly served with originating process in Hong Kong or in an action in rem

Other
Please specify

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.

So long as the defendant may be properly served, the court may hear the case

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.

Under the common law principle of res judicata if the foreign proceedings have been properly concluded

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.

Under the common law principle of forum non conveniens

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

for example, on the ground of abuse of process

other
Please indicate.