

Title	Practical Guide to Access to Justice for International Tourists and Visitors
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Author	PB
Agenda Item	Item TBD
Mandate(s)	C&D No 4 of CGAP 2021
Objective	To update CGAP on work related to the Tourists and Visitors (ODR) Project and to seek approval to adopt and publish the Practical Guide to Access to Justice for International Tourists and Visitors
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input checked="" type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
Annex	Annex I: Revised Draft Practical Guide to Access to Justice for International Tourists and Visitors
Related Documents	Prel. Doc. No 1 of September 2021: Draft Practical Guide to Access to Justice for International Tourists and Visitors

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Practical Guide to Access to Justice for International Tourists and Visitors

I. Introduction

- 1 At its meeting in 2021, and in response to a recommendation from the Experts' Group on Tourists and Visitors (Online Dispute Resolution), CGAP mandated the PB to develop a Practical Guide to Access to Justice for International Tourists and Visitors ("Guide"), to be submitted for approval at its 2022 meeting.¹

II. Draft Guide

- 2 A draft of the Guide, in the form of Prel. Doc. No 1, was circulated for comment on 21 September 2021 to Members and Observer Organisations which participated in the Experts' Group. The PB received comments from 10 Members and 1 Observer. Comments received have been incorporated, where appropriate, by the PB. The revised draft is available, as annexed to this document, as a clean copy and with tracked changes.
- 3 A number of additional suggestions outside the current scope of the Guide were received, namely, for the addition of a Part Three. This additional section would include region-specific instruments, noting that most tourists travel to other States within their region. This could require the PB to contact regional organisations and / or groups of States to provide examples of relevant regional instruments. Or, alternatively, to provide a model online form where interested Members could insert their regional instruments. The PB has concluded that this is outside the existing mandate and would require approval from CGAP.
- 4 The PB wishes to draw the attention to a comment that was made on Part One: ODR Platforms, that reads:

"The diversity in the existing platforms may suggest a lack of harmonized framework for potential cross-border ODR mechanism(s) in relation to tourists and visitors and the need to explore the type of instruments and its scope which would best facilitate the access to justice through ODR."
- 5 Should CGAP approve the Guide, a mandate regarding the format of the publication is required. The PB invites CGAP to consider all possible publication formats and to provide a clear mandate regarding the extent to which the PB should ensure the Guide is user-friendly, attractive, and effectively used by tourists and visitors.
- 6 The PB recommends that the Guide is, at a minimum, published in an interactive online format on the HCCH website – and not as a standard PDF printable document. Among other advantages, this would ensure that any relevant subsequent update is automated and, thus, would limit the use of additional resources. Automated updates of contents would mean that information in the Guide that may change over time (e.g., status and outlines of Conventions) would be directly linked to the source where it is regularly updated – making it unnecessary to update the Guide itself. An interactive online format would mean that the Guide would be published as a microsite (*i.e.*, an individual webpage which is meant to function as a discrete and simpler entity within an existing website) hosted within the HCCH website. In practical terms, this means that by clicking on the link to the Guide on the HCCH Homepage, users would have access to a portal with the different scenarios that most closely relate to the purpose of their consultation, as well as to the list of ODR

¹ See C&D No 3 of CGAP 2021.

platforms that could be displayed according to the different criteria under which they are presented in Annex I to this document.

- 7 It should be noted that the apparent repetitive nature of the Guide is necessary in text-format to ensure approval of all its contents. Envisaging its online format, access to the different scenarios would become more intuitive, each operating as a distinct entry point for any consultation.
- 8 Acknowledging that the Guide does not cover all possible scenarios that tourists and visitors face, the PB, when seeking comments, also requested information on relevant case law relating to cross-border tourism claims.
- 9 Furthermore, the PB wishes to stress that it sought to draft the Guide in layperson terms, which may, in some cases, oversimplify legal considerations and appear less intuitive to the legal community.

III. Observer Status at UNWTO

- 10 In addition to work on the Guide, the PB has been participating as an observer to the Committee for the development of an International Code for the Protection of Tourists at the United Nations World Tourism Organization (UNWTO).
- 11 The PB was invited to provide comments and focused on ensuring proper coordination between the draft International Code for the Protection of Tourists (“draft Code”; “Code”) and existing HCCH Conventions, as well as with the draft Guide. As a result, additional text on matters relating to access to justice, applicable law, jurisdiction, and information for service abroad was included in the draft Code.²
- 12 The Code was adopted by the UNWTO General Assembly at its 24th session from 30 November to 3 December 2021.

IV. Proposal for CGAP

- 13 Based on the foregoing, the PB proposes the following conclusions and decisions:
- a. CGAP welcomed the participation of the PB as an observer to the United Nations World Tourism Organization (UNWTO) and its substantive contributions to the UNWTO International Code for the Protection of Tourists.
 - b. CGAP adopted the HCCH Practical Guide to Access to Justice for International Tourists and Visitors, subject to *toiletage* and publishing amendments, and approved its publication on the HCCH website in an interactive online format.
 - c. CGAP mandated the PB to maintain on the HCCH website a repository of case law, submitted by Members, relating to cross-border tourism claims.
 - d. CGAP approved the development of a Part Three of the Guide, to include region-specific instruments, noting that most tourists travel to other States within their region. CGAP mandated the PB to provide a model online form where interested Members could insert their relevant regional instruments.

² Chapter 3.I.I, Clause 2(i); Chapter 3.I.I, Clause 2(ii); Chapter 3.I.II, Clause 5(i); Chapter 3.I.VI; Chapter 4.III, Clause 3.

ANNEX

Annex I

Draft Practical Guide to Access to Justice for International Tourists and Visitors

Introduction

This Guide is intended to assist international tourists and visitors to foreign countries seeking access justice for disputes arising from their tourism experience by providing information on online dispute resolution mechanisms that may be available and HCCH legal instruments that may be relevant in a given case.

For the past several decades the world has seen an explosion in the growth of tourism.¹ Inevitably, the rate at which tourists will be dissatisfied with the goods and services they receive will also increase.² International tourists and visitors may continue to face significant obstacles with respect to access to justice when a dispute arises between the tourist / visitor and the provider of a good or service.

Some of the barriers faced by tourists and visitors in accessing justice may include: (1) limited ability to access legal aid, (2) costs associated with initiating court proceedings or securing a judgment, (3) a lack of information on the rights of tourists and the remedies available to them, (4) the requirement of physical presence to initiate, participate in, or conclude judicial or ADR procedures, (5) the absence of small claims courts or procedures that are suitable to international tourist disputes, (6) specificity of administrative or governmental bodies which facilitate the resolution of international tourist disputes, and (7) the limited cooperation mechanisms between national consumer protection bodies.³

This Guide is intended to bridge the gap between these issues and facilitate access to justice for international tourists and visitors when other recourse is not available. Users should first check if they can access recourse through complaint mechanisms provided by the private sector or commercial entities, such as relevant credit card or insurance associated services.

Access to legal aid

In some cases, foreign nationals, and therefore international tourists and visitors, are not guaranteed the same access to legal aid that is guaranteed to the nationals of a country. In these situations, legal aid is restricted to the nationals of the particular country that is guaranteeing aid, or in some cases, habitual residents or those with a permanent legal status other than citizenship. In the cases in which legal aid is provided to foreign nationals regardless of their residency, legal aid may be restricted to those who display a certain level of economic need or disability. Without this crucial assistance, many international tourists and visitors are dissuaded from pursuing claims in a foreign country due to the complexity of the foreign legal system.⁴ Moreover, judicial proceedings in many countries are conducted solely in the language of the country in which the judiciary is located. The language barriers presented by foreign judiciaries, compounded with a frequent inability to access local legal aid that could help overcome these language barriers, present one of the greatest challenges to a tourist's ability to access justice abroad.

¹ UNWTO Tourism Highlights, 2020 Edition, English version published in January 2021, available at < <https://www.e-unwto.org/doi/epdf/10.18111/9789284422456> >.

² See Annex III, p. xiv of CGAP Prel. Doc. No 3 of October 2018, available on the HCCH website at < www.hcch.net > under Governance" then "Council on General Affairs and Policy" then "Archive (2000-2021)".

³ See Annex II, p. 7 of CGAP Prel. Doc. No 1 of February 2020, available on the HCCH website at < www.hcch.net > (see path indicated in note 2).

⁴ See Annex III, p. xxix of CGAP Prel. Doc. No 3 of October 2018, available on the HCCH website at < www.hcch.net > (see path indicated in note 2).

Costs associated with initiating court proceedings or securing a judgment

In a number of countries around the world,⁵ a security or bond (referred to as a *cautio judicatum solvi*) is often required for foreign nationals or non-habitual residents to initiate court proceedings or to secure a judgment. While the cost of such a security or bond varies, the existence of the cost in and of itself often presents an obstacle to international tourists and visitors seeking to carry out proceedings. In addition, some countries require costs other than a security or bond, such as court fees, filing fees, and other fees commonly associated with judicial processes. These are in addition to any expense that is required for local legal advice. The existence of these fees, along with the fact that many international tourists and visitors are unable to access local legal aid and therefore must cover the costs of legal representation, may present prohibitively high costs in accessing the judiciary of foreign countries as a tourist.

Information on the rights of tourists and remedies available to them

Many tourism destinations have information campaigns or other structured efforts to provide information to domestic consumers on their rights and legal remedies, as well as of available dispute resolution procedures. However, such efforts are often not specifically or sufficiently aimed at international tourists and visitors.⁶ Some countries may have a centralised tourism authority, but these authorities themselves are often not appropriately equipped to expressly inform or assist international tourists and visitors with their legal rights and available remedies. While some countries may have concerted efforts to provide tourists with information at popular tourist destinations, such as airports, this information is usually limited in scope and in language.⁷ Although much of the information that would be useful to a tourist is available online, even a very proactive tourist would have difficulty informing themselves of all their available rights and remedies, especially in their own language.

The requirement of physical presence to initiate, participate in, or conclude judicial or ADR procedures

The legal systems of some countries and other independent, third-party ADR organisations require the physical presence of all parties to a dispute in order to carry out litigation, conciliation, or mediation proceedings. While ADR is often seen as an attractive option to resolve disputes, especially commercial disputes between an international tourist or visitor and the provider of a good or service, a physical presence requirement may present an obstacle to this method of dispute resolution. Moreover, the ability of a tourist to commence judicial proceedings in a foreign country, whether physically present or not, varies based on domestic law. Many international tourists and visitors do not have the ability to stay in a foreign country to complete judicial or extrajudicial dispute resolution proceedings, either due to economic or legal (visa and / or immigration) reasons. While some countries allow for the representation of a party by a legal representative, this carries an additional cost. This vulnerability may also lead to delaying tactics by the commercial seller of goods and services in order to run out the clock on a consumer's claim.

Small claims courts or procedures that are suitable to international tourist disputes

While some countries provide access to a judicial proceeding that is commonly called "small claims", these proceedings are not available in every country, nor do they always provide equal access to foreigners and nationals. In general, a small claim is a claim for damages, or monetary compensation, which falls beneath a certain threshold. This threshold varies on a country-by-country basis.

⁵ Based upon responses to a Questionnaire circulated by the Permanent Bureau in 2016 in order to assess the need for and feasibility of an international instrument in the area of access to justice for international tourists.

⁶ See Annex III, p. xxx of CGAP Prel. Doc. No 3 of October 2018, available on the HCCH website at < www.hcch.net > (see path indicated in note 2).

⁷ See Annex III, p. xxx of CGAP Prel. Doc. No 3 of October 2018, available on the HCCH website at < www.hcch.net > (see path indicated in note 2).

Administrative or governmental bodies facilitating the resolution of international tourist disputes

Some countries have administrative or governmental bodies aimed at facilitating the resolution of international tourist disputes. They have specific and differentiated features. In some cases, they do not have the infrastructure or language capabilities to facilitate the resolution of disputes between international tourists and visitors and local providers of goods and services. When there is no centralised authority that is competent to handle such matters, some international tourists and visitors may seek aid from their own national agencies to the extent that they have the mandate of providing assistance for the resolution of international tourist disputes.

Cross-border cooperation mechanisms between national consumer protection bodies

A number of countries have an entity that is competent to handle matters concerning the resolution of disputes between consumers and commercial providers of goods and services. These agencies are often useful in resolving disputes within a country's jurisdiction. However, while an international tourist or visitor may be able to bring a complaint to their national consumer protection authority regarding a dispute that arose abroad, the ability to resolve such disputes is often limited. Although international tourists and visitors could seek assistance from the consumer protection authority in the country in which the dispute arose, they are often limited in doing so by available resources, lack of access to information, or language barriers.

Definitions

Visitor⁸

A "visitor" is a traveller taking a trip to a main destination outside their usual environment, for less than a year, for any main purpose (business, leisure, or other personal purpose) other than to be employed by a resident entity in the country or place visited.

Tourist⁹

A visitor (domestic, inbound, or outbound) is classified as a "tourist" if their trip includes an overnight stay.

Litigation

The process of dispute resolution through court resulting in an enforceable judgment.

Arbitration¹⁰

"Arbitration" is a process whereby parties agree to refer a dispute to a third person or persons ("the arbitrator") to make a final and binding decision.

⁸ Definition from UNWTO, available at < <https://www.unwto.org/glossary-tourism-terms> >.

⁹ Definition from UNWTO, available at < <https://www.unwto.org/glossary-tourism-terms> >.

¹⁰ Definition adapted from UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration, p. 12.

Mediation¹¹

“Mediation” means a process whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute.

Online dispute resolution (ODR)¹²

Online dispute resolution, or “ODR”, is a “mechanism for resolving disputes through the use of electronic communications and other information and communication technology”.

Alternative dispute resolution (ADR)

Alternative dispute resolution, or “ADR”, means a process for resolving disputes through means other than litigation.

¹¹ Definition from United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention), Art. 2(3).

¹² Definition from UNCITRAL Technical Notes on Online Dispute Resolution, para. 24.

Part One: ODR Platforms

The following illustrative list of ODR platforms is not exhaustive and does not constitute an endorsement on behalf of the HCCH, or of any participating Members or entities, nor is it intended to favour certain platforms.

The list includes both private and public ODR providers. In particular, private ODR providers may employ dispute resolution methods that do not guarantee full application of the existing legislation on consumer and passenger rights, and the solution may differ from the one that a court, or a qualified consumer dispute resolution body, would impose. The readers are therefore invited to take due note of the sponsoring entities under the “overview” section for each ODR platform.

A brief summary of each platform includes criteria for use, accessibility, process, legal questions, and enforcement questions. It is important to consider whether each platform is useful for your case. Factors to consider may include:

- Whether the claim fits the criteria.
- Whether the platform operates in a language you can understand.
- The cost of the application fee.
- How long the process may take.
- Which law will apply.
- How to enforce a decision.

It should be noted that some of these platforms are designed for purposes that are not specific to international tourists and visitors.

This part is designed to inform tourists and visitors about platforms they may use in dispute resolution. For examples of common scenarios, please see Part Two.

Airbnb Online Resolution Centre

[Visit the website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

The Airbnb Resolution Centre is an online portal where an Airbnb user, whether a host or a guest, can make a refund or payment request related to an Airbnb trip. It is the ability to “request or send money” related to a trip when an issue has arisen.

- The sponsoring entity is Airbnb.
- The platform is maintained and funded by Airbnb.

Criteria

Any user of Airbnb, whether a host or guest, may use the Resolution Centre after they have stayed at a property registered with Airbnb.

- The claim must be related to an Airbnb reservation.
- It is available to all Airbnb users, **regardless of nationality or location**.
- Requests include inaccurate listings, broken amenities, and damage to property.
- There is **no limit** on the amount of compensation that can be requested.

Accessibility

The Resolution Centre is a platform on the Airbnb website where hosts and guests can communicate **through direct messaging**.

- A user must have an **Airbnb account** and have stayed at a property booked through Airbnb.
- Airbnb is available in **62 languages**. The host and guest can communicate in whatever language is convenient to them.
- Using the Resolution Centre is **free**.

Process

- A claim is made through the Resolution Centre.
- The host and guest try to reach an agreement.
- If an agreement is not reached in **72 hours**, the party who initiated the request can ask Airbnb staff to make a final decision.
- The Airbnb staff member will review any claims or evidence provided by the host and the guest and **come to a final decision**.

Legal questions

Hosts and guests make requests and attempt to come to an agreement on their own initiative.

- Airbnb is **indemnified** against injuries, losses or damages suffered by a host or guest in connection with a stay.
- Users of Airbnb are covered by the site’s [Terms of Service](#), including related [terms and policies](#).
- Applicable law will be based on your residence and location.

Enforcement

- If Airbnb determines under applicable statutory rules that they are responsible for a damage claim, they may **collect sums from the responding host or guest** or against a security deposit.
- Airbnb may **suspend** hosts or guests from the platform for not complying with their terms, policies, or standards.
- There are no other particular enforcement policies.

British Columbia's Civil Resolution Tribunal

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

The Civil Resolution Tribunal (CRT) provides a forum for the resolution of disputes in British Columbia, Canada, involving vehicle accidents, small claims up to C\$5,000, strata property, and societies and cooperative associations.

- The platform is **sponsored, maintained, and funded** by the public justice system of **British Columbia, Canada**.
- The platform has a **legal basis** in the [Civil Resolution Tribunal Act \(2012\)](#) (the Act) and is covered by the [CRT Rules](#).

Criteria

- The platform may be used by **any person** whose claim falls within the jurisdiction of the CRT.
- Claims may relate to **vehicle accidents** (accident benefits, fault and damages, and minor injury determinations) or **small claims**.
- For vehicle accidents, the maximum value is **C\$50,000**. For small claims, the maximum value is **C\$5,000**.

Accessibility

Parties can submit a claim to the CRT using its [website](#).

- CRT operates in **English**. Informational material is available in Chinese simplified, Chinese traditional, French, Persian, Punjabi, Spanish, and Vietnamese.
- The **application fee** ranges from **C\$75-C\$150** and depends on the type of claim. There is a discount if the claim is filed online.

- There are also fees for responding to a claim, requesting a tribunal decision, or filing a notice of objection. No fee is more than C\$200.
- Parties may be eligible for a **fee waiver**.
- Parties may have a **representative** or **helper** to assist with a claim.

Process

- Using the Solution Explorer, the applicant answers questions about the claim.
- The Solution Explorer provides free legal information and indicates the appropriate **application form**.
- The applicant completes and files the application form.
- If the CRT accepts the claim, it will (in most cases) serve the other parties with a **Dispute Notice**. The applicant may have to serve the Dispute Notice if not enough information is provided, the CRT cannot serve the Dispute Notice, or the applicant chooses to.
- A respondent who is served with a Dispute Notice and instructions for response **must return a completed Dispute Response Form** to the tribunal and pay the required fee. This must be done within fourteen (14) days of receiving the Dispute Notice, or, if service was outside British Columbia, within thirty (30) days.
- Once the respondent responds to the Dispute Notice the case moves through **negotiation** and **facilitation**. Negotiation is voluntary and can only take place if both parties agree. If parties do not agree, they will participate in facilitation with a case manager assigned to help them reach an agreement.

- If no resolution is reached, the parties can ask for a decision from the CRT and an independent member will decide the claim. The **CRT's decision will be binding**.
- If a respondent refuses to participate, the claim can proceed against the respondent and may result in a **default order**.

Legal questions

- For the CRT to have jurisdiction over a claim, there must be a real and substantial connection between British Columbia and the facts in the dispute.
- This includes if the dispute occurred in British Columbia, or if the applicant or respondent lives or carries on business in British Columbia.
- Applicable law is the **law of British Columbia**. This includes the [Insurance \(Vehicle\) Act](#) and the [Small Claims Act](#).

Enforcement

- To enforce a CRT order, it must be filed with either the British Columbia Provincial Court or the British Columbia Supreme Court. This may be [done online](#).
- If a party disagrees with a decision, it can appeal to the British Columbia Provincial Court or the British Columbia Supreme Court.

Chinese Courts of the Internet (e-Commerce)

Visit the websites, ([Beijing](#)), ([Hangzhou](#)), ([Guangzhou](#))

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

The Beijing, Hangzhou, and Guangzhou Courts of the Internet deal with **e-commerce and other Internet-based claims** that arise from **online activity**.

All court processes are virtual.

- The platform is sponsored, maintained, and funded by the Beijing, Hangzhou, and Guangzhou Courts of the Internet.
- The courts have a **legal basis** in China's [e-Commerce law](#).

Criteria

- The platform may be used by **any person** whose claim falls within the jurisdiction of the courts.
- Claims must relate to online purchases, including online shopping, service and financial contracts concluded online, and claims concerning the property, personal, and civil rights of others on the Internet.
- There is no **minimum or maximum claim value** limited by the rules of the Courts.

Accessibility

The Courts are accessed through the internet.

- The platforms for Beijing and Hangzhou are available in **Chinese and English**. The Court located in Guangzhou is only available in **Chinese**. Proceedings are conducted in **Chinese**.
- Parties will have to pay a **fee** to file a claim.
- Processes such as payment, uploading evidence, accessing the other party's document submission, and contact with staff are all done online.

- All proceedings are **held virtually** unless otherwise specified by the court, with audio and video recorded.

Process

- A plaintiff must register with the Court's e-litigation platform by filling out personal information and submitting digital versions of **official government identification**. The platform will then generate a **QR code**, which becomes active after a facial id verification scan.
- Once the account is active, the plaintiff clicks on 'I want to file a case', **chooses from a list of disputes** that the Courts can hear, and inputs the value of the claim.
- The plaintiff may submit their own **statement of complaint** or fill in an auto-generated template. Any evidence may also be uploaded.
- Once documentation has been submitted, the application will be reviewed by judges of the Courts of the Internet, who will transmit their acceptance of the claim via text message. Defendants will receive a communication from the Courts with a file number, allowing them to log into the e-litigation platform and participate in the resolution of the case.
- Parties may agree to proceed with **mediation**. If mediation is not chosen, or it fails, the case will proceed to trial.
- Parties to the dispute will receive a text when a hearing time is set, and a summons via the e-litigation platform. The trial is conducted online via **videoconferencing**.
- The decision handed down by the court will be received via a method chosen by the parties.

Legal questions

- A claim must have a “genuine connection” to either Beijing, Hangzhou, or Guangzhou. Examples include where the contract was completed or performed, where the damage occurred, and the location of the parties.
- Applicable law is the **law of China**.

Enforcement

- All judgments made by the Courts of the Internet are valid judgments in law and are enforceable under the **laws of China**.
- A party may appeal the decision of the Court within the appeal period listed on the final judgment.
- Parties may apply to have their judgment executed by the authorities relevant to where their case was filed.

CIETAC Online Arbitration

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

An online arbitration system by the China International Economic and Trade Arbitration Commission (CIETAC) for the resolution of disputes.

- The platform is sponsored, maintained, and funded by CIETAC.

Criteria

- CIETAC resolves claims based on **an agreement** of the parties.
- This includes international or foreign-related disputes.
- Applicants must be able to show an **arbitration agreement** that refers their dispute to CIETAC in accordance with its online arbitration rules (see the [model arbitration clause](#)).

Accessibility

Parties can register a claim with CIETAC using its [online platform](#).

- CIETAC's website and its resources are available in both **Chinese** and **English**. The platform is currently available in **Chinese** only.
- The **fee** will depend on the amount of the claim, and whether it is foreign-related. A schedule of the fees is available [here](#).

Process

- Parties **register** on the platform with a username and password. **Both the applicant and the defendant** will need to register.
- Once registered, a party submits their arbitration application and evidence through the online portal.
- Unless the parties agree to hold oral hearings, or the arbitral panel thinks it is necessary, the case will be decided on a **documents-only** basis.

- Where an oral hearing is to be held, it shall be conducted by means of online oral hearings such as via videoconference or other electronic or computer communication forms. The arbitral tribunal may also decide to hold traditional oral hearings in person based on the specific circumstances of each case.
- Witnesses may testify by videoconference, by regular oral hearing in person, or by any other appropriate manner as decided by the arbitral tribunal.
- An award will be rendered within fifteen (15) days for arbitration under Expedited Procedures, two (2) months for arbitration under Summary Procedures, and four (4) months for all other matters unless otherwise agreed by the parties or decided by the arbitral tribunal.

Legal questions

- Jurisdiction over the parties is based on **consent**.
- Applicable law is based on the **agreement made by parties**. If there is no agreement, the arbitral tribunal shall decide the applicable law.
- Arbitration is governed by the CIETAC [Online Arbitration Rules](#) and [CIETAC Arbitration Rules](#), as interpreted by CIETAC.

Enforcement

- CIETAC is not involved in the enforcement of agreements reached by parties.
- Arbitral awards are enforceable under the New York Convention.

Civil Court of the City of New York

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

The Civil Court of the City of New York offers ODR for its Small Claims Part. A case must have already been filed.

- The platform is sponsored, maintained, and funded by the New York Unified Court System.

Criteria

- The claim must be related to the purchase or sale of goods or services.
- Claims must be filed in the Small Claims Part of the New York County (Manhattan) Civil Court.
- Claims can only be monetary with a maximum value of **USD\$10,000**.
- It is only available for parties that **do not have legal representation**.

Accessibility

Parties can register their existing claim using the [website](#).

- The platform operates in **English**. Informational material on Small Claims Court is available in Spanish and Chinese.
- The ODR system is **free**. Parties must still pay the **standard court filing fees**.

Process

- The party making a claim registers on the site. The court then notifies the other party.
- If both parties agree to use the site, they work directly to come to a settlement.

- If an agreement is not reached, a **mediator** is automatically assigned to assist.
- If ODR is unsuccessful, the claim continues through the usual court process.

Legal questions

- Completed and signed agreements are considered **binding contracts**.
- The Court is covered by the [New York City Civil Court Act](#).

Enforcement

- In the case of non-performance, the contract can be enforced through judicial authorities.

Concilianet de PROFECO

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

Concilianet provides virtual conciliation hearings between consumers and registered providers. Any consumer who believes a registered provider is in breach of a warranty or contract for a good or service provided in Mexico may request conciliation through the platform.

- The platform is **sponsored, maintained and funded** by the Office of the Federal Prosecutor for the Consumer of Mexico (**Procuraduría Federal del Consumidor**).
- The platform has a legal basis in the [Federal Consumer Protection Law of 24 December 1992](#).

Criteria

- The platform may be used by **any consumer** with a claim for **breach of warranty or contract** for a good or service that was provided in Mexico by a provider registered with Concilianet.
- A list of registered providers can be found [here](#).
- Claims must relate to **breaches of warranty or contract** in consumer settings.
- There is **no minimum or maximum value** or other limiting criteria for bringing a request for conciliation.

Accessibility

Concilianet is accessed and used through its [website](#).

- The website is available in **Spanish**. Conciliation hearings are conducted in **Spanish**.
- There is **no fee** to the consumer for registering or using the platform.

- Conciliation hearings are **via videoconference** on the platform. To participate in a conciliation, parties must have access to internet, a webcam, and a microphone.

Process

- A consumer **registers on the site** using an email address, username, and password. They then receive an email providing them a registration form requesting personal information.
- A consumer can make a claim by **filing a *queja*** (the complaint).
- To bring a valid request, the consumer must provide: **official identification, receipt or invoice for the purchase, warranty or contract**, and any other document that proves a purchase between the consumer and the provider.
- Concilianet will schedule an online conciliation hearing between the consumer and the provider. **Conciliation** is a procedure where the consumer and the provider try to reach a solution together. A conciliator from Concilianet will **assist** with the conciliation.
- Conciliation can have two results: the **parties come to an agreement** about how to resolve the dispute, or the **parties do not reach a solution**.
- If no agreement is reached, the consumer can request arbitration from the Office of the Federal Prosecutor for the Consumer. The consumer can also pursue their complaint with the relevant civil authority. The Office of the Federal Prosecutor for the Consumer of Mexico will assess probable violations of the Federal Consumer Protection Law by the provider and pursue action against them. The results of such action will be available to the consumer to use in any independent claim against the provider.

Legal questions

- Jurisdiction over the parties is based on **consent**. Consumers subject themselves to the conciliation procedures of Concilianet by filing their claim, and providers consent in advance by registering with Concilianet's platform.
- Applicable law is the **law of Mexico**.

Enforcement

- A consumer **cannot be awarded damages** through Concilianet. The platform is intended to ensure compliance with the agreement between the consumer and the registered provider in the sale or provision of a good or service. Any claim for damages must be made by civil action before competent courts.
- Once an agreement is reached through conciliation, the consumer and the provider will enter into a **binding contract** that will outline the terms of the agreement.
- If the provider fails to fulfil the terms of the contract, the consumer may initiate proceedings through Concilianet again to come to another agreement. In the case of non-performance, the contract can also be enforced through civil authorities.

Consumidor.gov.br

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

Consumidor.gov.br platform assists consumers to resolve complaints about goods or services purchased through registered suppliers in Brazil.

- The platform is **sponsored and maintained** by the National Consumer Secretariat of the Ministry of Justice (**SENACON**).
- The platform has a legal basis in [Decree No 8,573 of 19 November 2015](#).

Criteria

- The platform may be used by **any consumer** with a complaint against a supplier registered Consumidor.gov.br.
- The complaint must be between a **consumer resident in Brazil** and a **supplier established in Brazil**.
- A list of registered suppliers can be found [here](#).
- Complaints must relate to the **sale and use of goods or services**.
- There is **no minimum or maximum value** or other limiting criteria for filing a complaint.

Accessibility

Consumidor.gov.br is accessed and used through its [website](#).

- The platform is available in **Portuguese** and is accessible in **Brazilian sign language**.
- There is **no fee** to the consumer for registering or using the platform.
- The complaint is managed through an **exchange of messages and documents** on the platform.
- Consumers may **monitor** the performance of registered suppliers using **indicators** such as the number of complaints

completed by the supplier, solution percentages, consumer dissatisfaction with the service, average response time and response percentage.

Process

- A consumer **registers on the site** using an individual taxpayer identification number (CPF), password, and email. Once registered, a consumer may **submit a complaint** against a registered supplier.
- The supplier has up to **10 days** to review and respond to the complaint.
- The consumer then has up to **20 days** to consider the supplier's response. The consumer can mark the complaint as **Resolved** or **Unresolved** and report on their satisfaction and the level of service. After this, the matter is marked as **Finalised** and it is closed.
- The system does not allow more than one complaint to be filed with the same matter against the same supplier. If there are new facts, these can be provided in the "Complaint Description" section of the original complaint.
- If no resolution is reached, consumers are encouraged to use a different dispute resolution tool.

Legal questions

- Users of Consumidor.gov.br are governed by the site's [Terms of Use](#) Participating suppliers are bound by the [Terms of Adhesion and Commitment](#).

Enforcement

- Consumers and suppliers attempt to come to an agreement on their own initiative and the outcome is **non-binding**.
- Complaints are monitored collectively by organs of the National Consumer Protection System and SENACON in an effort to improve consumer protection policies.

eBRAM ODR Platform – Mediation & Arbitration

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

On 1 June 2021, the eBRAM International Online Dispute Resolution Centre Limited (“eBRAM Centre”) adopted the eBRAM Rules of Mediation and eBRAM Arbitration Rules for the eBRAM ODR Platform for resolving local and cross-border disputes online.

- The platform is covered by Hong Kong, China's Personal Data (Privacy) Ordinance and other data protection laws and regulations as and where applicable.
- ODR proceedings are governed by **procedural rules**: eBRAM Mediation Rules (“Mediation Rules”) and eBRAM Arbitration Rules (“Arbitration Rules”) subject to modifications as the parties may agree and eBRAM Centre may accept.

Criteria

- Parties must agree that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to mediation or arbitration conducted on the eBRAM ODR Platform.
- Under the Mediation Rules and Arbitration Rules, the platform applies to any type of disputes regardless of the amount in dispute and the origin of the parties.
- To commence arbitration proceedings, the parties are required to have agreed to resolve their dispute under the Mediation Rules and pay the **HK\$2,500 administrative fee**. There is also a HK\$1,500 fee for using eBRAM’s videoconference system (for the first day), HK\$250 fee for additional hours, and a fee to the mediator, which is discussed and arranged directly between the parties and the mediator.

- To commence arbitration proceedings, the parties are required to have agreed to resolve their dispute under the Arbitration Rules and pay the **HK\$5,000 registration fee**. The administrative fee and Arbitral Tribunal's fees will be calculated on the basis of the amount in dispute.

Accessibility

- The platform takes the form of an interactive website with video conferencing technology.
- Parties submit their cases through the online case filing portal of the platform.
- The platform is available in **Cantonese, Mandarin, and English**. The proceedings shall be conducted in the language agreed by the parties. If there is no agreement, the language of the proceedings shall be determined by the arbitral tribunal or mediator.

Process

- To commence a mediation proceeding, a party to a dispute files a request for mediation. The party who receives the request for mediation will submit its response within 10 days.
- The mediation proceedings are conducted by one mediator, unless otherwise agreed by the parties. eBRAM Centre will appoint the mediator, unless the parties agree to appoint one.
- The mediation will start as soon as possible after the mediator has been appointed. It will be concluded within ten (10) days of the mediator's appointment.
- To commence an arbitral proceeding, a party to a dispute files a notice for arbitration online. The arbitral proceedings commence from the date on which the notice for arbitration is received by respondent.

The respondent has 30 days to submit its response to the notice for arbitration.

- The arbitration is conducted by **one or three arbitrators**. If the parties' do not agree, eBRAM Centre will decide on the number of arbitrators.
- If there is one arbitrator, eBRAM Centre will appoint the arbitrator, unless the parties agree to appoint one.
- If there are three arbitrators, each party nominates one arbitrator and the third arbitrator (who is the presiding arbitrator) is jointly nominated by the two arbitrators. If there is no agreement, the presiding arbitrator is appointed by eBRAM Centre.
- The arbitral tribunal will fix time limits not exceeding **45 days** for the submission of the written statement of claim and statement of defence. This time may be extended if justified.

Legal questions

- Each of the parties is required to acknowledge and agree that they have read and understood the Terms and Conditions of Services for the platform, and Personal Information Collection Statement for the platform.
- The laws of HKSAR apply to all proceedings conducted under the platform and eBRAM Mediation and Arbitration Rules.
- The HKSAR shall be the place of the arbitration (known as the seat of arbitration) unless the parties have agreed in writing otherwise.

Enforcement

- Mediation settlement agreements are enforceable as a contractual agreement between the parties. In the case of arbitral proceedings, the parties can also request the arbitral tribunal to render a consent award, incorporating the terms of the settlement agreement.
- The execution and enforcement of the outcome resulting from the arbitration is governed by the eBRAM Arbitration Rules. Under the Arbitration Rules, all awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

Endispute™

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

Endispute™ is an online mediation service for lower-cost disputes that can be resolved in a two-hour session.

- The platform is **sponsored, maintained, and funded** by JAMS, a private ADR company based in the United States.

Criteria

- The platform is used by **mutual agreement** of parties.
- It may be used regardless of nationality or location.
- Claims must be of low-to-moderate value.
- The claim must be able to be resolved in a **two-hour session**.
- Parties may contact Endispute™ before registering a claim to confirm that it is an appropriate forum.

Accessibility

Parties can register a claim by contacting Endispute™. The mediation is conducted using the Endispute™ platform.

- The platform is available in **English** and all mediations are conducted in **English**.
- The mediation fee is **USD\$500 per party** for two hours. It costs an additional USD\$300 per hour per party for any time over two hours.
- Each party may have up to **two participants**. It costs an additional USD\$100 per hour per participant for additional participants.
- Parties require a phone or computer with audio and video compatibility to access the platform and participate in mediation.

Process

- Parties **must agree** to settle their claim using Endispute™. One of the parties then submits the claim to the platform **online, via email, or by phone** (US number).
- An Endispute™ case manager helps parties **select a mediator** from JAMS.
- Parties will be sent information about how to access the mediation session. They will also receive a **fee agreement** and **confidentiality agreement** which must be completed and returned before the session.
- The assigned mediator will let parties know what documents they require. This normally includes a **one-page mediation brief** which outlines the issues and the desired outcome.
- Parties can also **upload and download documents** while the mediation is in session.
- If mediation is not reached within two hours, parties may extend the mediation session, schedule another mediation session (online or in-person), or pursue other dispute resolution pathways.

Legal questions

- JAMS and its mediators follow the [JAMS International Mediation Rules](#).
- Participation is based on **consent**.
- Mediation is governed by the laws of the place where the mediation takes place.
- Applicable law is the law of the state of **California, United States**.

Enforcement

- Agreements reached during mediation sessions are signed by both parties and submitted to the platform.
- A settlement is only **legally binding** when it has been written and signed by the parties.
- Endispute™ is not involved in the enforcement of agreements reached by parties.

EU Online Dispute Resolution Platform

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

This platform assists consumers to resolve complaints about goods or services purchased online in the EU, Norway, Iceland, or Liechtenstein.

- The **sponsoring entity** is the European Union.
- The platform is **maintained and funded** by the European Commission.
- The platform has a legal basis in [Regulation \(EU\) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation \(EC\) No 2006/2004 and Directive 2009/22/EC \(Regulation on consumer ODR\)](#).

Criteria

- The platform may be used by consumers and traders for the disputes originating from online purchases.
- ‘Consumer’ means any natural person who is acting for purposes which are outside his or her trade, business, craft, or profession.
- ‘Trader’ means any natural person, or any legal person who is acting for purposes relating to his or her trade, business, craft, or profession.
- The claim must be between a consumer resident in the EU, Norway, Iceland or Liechtenstein, and a trader established in the EU, Norway, Iceland or Liechtenstein.
- Claims may relate to **solely online transactions** (where the consumer has ordered goods or services on a website or by other electronic means).
- Consumers can only be the **recipient** of a complaint if they reside in a country where national legislation envisages the use

of ADR in business-to-consumer disputes (currently Belgium, Germany, Luxembourg, and Poland).

Accessibility

The platform takes the form of an **interactive website** offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court.

- The platform is available in **all EU languages, Icelandic, and Norwegian**. An **automatic translation tool** is also available. The parties may request that the outcome of the dispute is professionally translated free of charge.
- The platform is **free**. Dispute resolution bodies may charge a fee.
- There is a **national contact point** in every EU country, Norway, Iceland, and Liechtenstein to assist with any issues.
- Dispute resolution bodies available on the platform have been approved by the national competent authorities for **quality standards** relating to fairness, efficiency, and quality.

Process

- **Account registration** is required to use all functionalities of the platform. A consumer may submit a claim against any online trader in the EU, Norway, or Liechtenstein, whether this trader has registered on the platform or not. Parties are notified by e-mail on the progress of the case.
- The trader must agree to **accept** the claim. If they refuse, the claim will be closed.
- First, consumers try to **find a solution with the trader directly** (contacting the trader through the platform).

- If there is no solution, and the trader agrees to refer the claim to an ADR body, the parties will be able to select an appropriate ADR body through the system. Information on **fees, geographical coverage and procedures** are available on each body.
- The parties have thirty (30) days to agree on an ADR body. After that, the ADR body has ninety (90) days to deliver an outcome, extendable for complex cases.
- The ADR body may **request documents** and **organise meetings** via the platform. They will also upload the **outcome** to the platform.
- If there is still no resolution, consumers are encouraged to use a different dispute resolution tool outside of the platform.

Legal questions

- Each body has its own rules and procedures.
- The platform is covered by the EU [General Data Protection Regulation](#) (GDPR) and the [Internal Data Protection Regulation](#) (IDPR).

Enforcement

- The outcome is **not always binding**; it will depend on the type of ADR body chosen. The parties are informed if the outcome is binding.
- The procedure for **appeal and review** of the ADR outcomes is a matter of national legislation and is outside the remit of the ODR platform.

Hong Kong SAR COVID-19 ODR Platform

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

The COVID-19 ODR Scheme (the “Scheme”) provides time and cost efficient ODR services to people and businesses based in the Hong Kong Special Administrative Region (“HKSAR”) to resolve local and global COVID-19 related disputes of low value.

- The **sponsoring entity** is the Government of the Hong Kong Special Administrative Region (“HKSARG”).
- The platform is **funded** by the HKSARG Anti-epidemic Fund and is **operated and maintained** by the eBRAM International Online Dispute Resolution Centre Limited (“eBRAM Centre”).
- The platform is covered by Hong Kong, China’s Personal Data (Privacy) Ordinance and other data protection laws and regulations as and where applicable.
- The ODR proceedings are governed by a set of procedural rules (“eBRAM Rules”), subject to modifications as the parties may agree and eBRAM Centre may accept.

Criteria

- Under the Scheme, the platform applies to **disputes arising out of or in relation to COVID-19** directly or indirectly; cases where the claim amount is **not more than HK\$500,000**; and cases where either one of the parties to the dispute is a Hong Kong resident or company registered under the Companies Ordinance (Cap. 622 or its predecessor Cap. 32) or the Business Registration Ordinance (Cap. 310).
- The Scheme does not cover disputes the subject matter of which are not arbitrable under the laws of the HKSAR.
- Parties are required to enter into a dispute resolution agreement (“**ODR agreement**”) under the Scheme and pay **registration fees** of

HK\$200 each. The fees for mediators and arbitrators will be borne and paid by the HKSARG.

Accessibility

- The platform takes the form of an **interactive website** with video conferencing technology.
- Parties submit their cases through the online case filing portal of the platform.
- The platform is available in **Cantonese, Mandarin, and English**. Parties indicate their preferred language in the ODR Agreement but may request to conduct the proceedings in another language during the process.

Process

- The platform adopts a multi-tiered dispute resolution process, which entails a **three-stage proceeding**: negotiation, mediation, and arbitration. Each step will be completed within a short period of time, aiming to solve a conflict within six weeks (Articles 6-8 of the eBRAM Rules).
- After the ODR Agreement signed by the parties has been uploaded onto the platform and the claim is assessed as eligible, eBRAM Centre will notify the respondent and invite it to respond within three (3) calendar days.
- The proceedings shall be deemed to commence from the date of notification by eBRAM Centre that the ODR Agreement is available on the platform.
- Parties first attempt to engage in the **negotiation stage** to settle their disputes. The negotiation stage shall commence upon receipt of the respondent’s response to the claimant’s claim or of the claimant’s response to the respondent’s counterclaim (if any).

- If the parties have not settled their dispute within three (3) calendar days of the commencement of the negotiation stage (with a possible extension of up to 3 days), the **mediation stage** of the proceedings shall commence.
- If the parties fail to reach a settlement agreement within three (3) calendar days from the appointment of the mediator, the **arbitration stage** of the proceedings shall commence.
- The arbitrator shall notify the parties of a deadline (no later than one (1) month from the arbitrator's appointment) for submissions.
- A decision will be made, and an arbitral award rendered, within seven (7) calendar days from the filing of the last submission.
- Each stage of the proceedings shall be conducted by one neutral (Article 11.1 of eBRAM Rules). At the commencement of each of the mediation stage and arbitration stage, eBRAM Centre shall generate a list of five names for the parties to choose from. If the parties do not agree to an appointment, eBRAM Centre shall appoint the neutral (Articles 7.1, 8.1 and 11.2 of eBRAM Rules).

Legal questions

- The Scheme is established by the HKSARG and is governed by a legally binding Memorandum of Understanding entered into by the Department of Justice of the HKSAR and eBRAM Centre.
- Each of the parties is required to acknowledge and agree that they have read and understood the Terms and Conditions of Services for the Scheme, the Personal Information Collection Statement for the Scheme, the Terms of the ODR Agreement for the Scheme and the eBRAM Rules for the Scheme.
- The laws of the HKSAR apply to all proceedings conducted under the platform.

Enforcement

- The execution and enforcement of an outcome are governed by the eBRAM Rules for the Scheme.
- In respect of the arbitration proceedings, the award shall be final and binding on the parties.

Justiça Sem Processo (JUSPRO)

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

Justiça Sem Processo (JUSPRO) offers online mediation and conciliation services for commercial complaints.

- The platform is **sponsored, maintained, and funded by JUSPRO**.
- The platform is governed by [Law No 13.105 of 16 March 2015 on Civil Procedure \(New Code of Civil Procedure\)](#) and [Law No 13.140/2015 on Mediation \(Mediation Act\)](#).

Criteria

- The platform is used by **mutual agreement** of the parties. This is either through a dispute resolution clause in a contract, or through voluntarily registering with the platform.
- The platform can be used by any person who is competent to enter into a binding contract under the **Brazilian Civil Code**. The parties must be resident in Brazil.

Accessibility

- JUSPRO is available in **Portuguese**.
- The **fee** will depend on the complexity of the claim and the amount involved. The fee must be paid in **two equal instalments**, the first on the date of the **initiation** of the procedure and the second on its **conclusion**.
- The parties will decide who is responsible for paying the fee. When one of the parties is an associated company, it will be responsible for paying the fee.

Process

- A party **registers on the site** using an individual taxpayer identification number (CPF) or company registration number

(CNPJ), password, email, phone number, and preference for hearing mode.

- Once registered, a party may submit a request for dispute resolution.
- A party may choose between **mediation** and **conciliation**. They then provide written details of their claim and upload any relevant documents.
- JUSPRO will contact the responding party and organise a hearing between the parties in person or via videoconference through the JUSPRO platform.
- The mediator or conciliator may be **chosen by the parties** or **appointed by JUSPRO**.
- The process takes an average of **15 days**.

Legal questions

- The platform is governed by the [Terms of Use](#).
- Parties may choose to be represented by **lawyers**. They must provide the CPF and the Brazilian Bar Association number of the lawyers.

Enforcement

- A settlement agreement made as part of mediation or conciliation will be **final and binding** on the parties.
- The agreement entered between parties will be ratified by the Court of Justice of São Paulo and is **judicially enforceable**.

PreSolv360

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

PreSolv360 offers online mediation and arbitration services for commercial complaints.

- The platform is sponsored, maintained, and funded by Edgecraft Private Solutions Ltd, a private company incorporated in India.

Criteria

- The platform is used by **mutual agreement** of the parties. This is either through a dispute resolution clause in a contract, or through voluntarily registering with the platform.
- The platform can be used by any person who is competent to enter into a binding contract under the **Indian Contract Act, 1872**. It may be used regardless of **nationality or location**.

Accessibility

Parties can register a claim with PreSolv360 using its [website](#).

- PreSolv360 is available in **English**. Mediation and arbitration are conducted in **English**.
- Using the dispute resolution procedures **carries a fee**. Parties may contact the platform to request a cost estimate for resolving their dispute.
- Payment for services on the platform may only be made in **Indian National Rupees**.

Process

- If a dispute resolution clause is included in a contract, parties can register on the website.

- If a dispute has already arisen, parties can make a claim to solve that dispute on the website.
- Parties can submit a claim using an **online form** which asks for the subject matter, the amount of the claim, and whether the parties seek mediation or arbitration.
- Once a claim is filed, the other party receives an email and must also register with the platform.
- Parties **will be assigned** a relevant representative from PreSolv360's list of mediators and arbitrators to resolve their dispute.
- Using Mediation360, parties begin with **negotiation**. If there is no agreement within **fourteen (14) working days**, it moves to mediation with an appointed mediator.
- Using Arbitration360, the appointed arbitrator reviews statements from each party and evidence and makes a final, binding decision.
- Resolutions can take between **3 hours** and **45 days**.

Legal questions

- The platform is governed by the [Terms and Conditions](#) and [Presolv360 ODR Standards](#).
- Jurisdiction over the parties is based on **consent**.
- Applicable law is the **law of India**.

Enforcement

- A settlement agreement made as part of mediation will be final and binding on the parties.
- If the terms of settlement are recorded in a **conciliation agreement**, it will have the same status and effect as an arbitral award.

- Arbitration and conciliation agreements are enforceable under the Indian [Arbitration and Conciliation Act, 1996](#).

Reclame AQUI

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

Reclame AQUI assists consumers to resolve complaints about goods or services purchased through registered suppliers in Brazil. These complaints can be searched by other consumers to see the reputation of a supplier.

- The platform is **sponsored, maintained, and funded** by Reclame AQUI.

Criteria

- The platform may be used by **any consumer** with a complaint against a supplier registered with Reclame AQUI.
- The complaint must be between a **consumer resident in Brazil** and a **supplier established in Brazil**.
- A list of registered suppliers can be found [here](#).
- Consumers may request a supplier to register.
- Complaints must be related to the **sale and use of goods or services**.
- There is **no minimum or maximum** value or other limiting criteria for filing a complaint.

Accessibility

Reclame AQUI is accessed and used through its [website](#)

- The platform is available in **Portuguese**.
- There is **no fee** to the consumer for registering or using the platform.
- The complaint is managed through an **exchange of messages and documents** on the platform. The consumer may also submit a complaint to the platform over WhatsApp.

- Some complaints may be subject to editing if they contain pejorative terms (such as “crime”, or “injured”) or if they infringe the [Terms of Use](#).

Process

- A consumer **registers on the site** using an individual taxpayer identification number (CPF), password, email, phone number and other personal data. Once registered, a consumer may **submit a complaint** against a registered supplier.
- In some cases, the platform allows **family or friends** to make a complaint on behalf of the consumer, if the consumer is aware of the complaint. In these cases, the supplier can contact the person who made the complaint and identify the consumer who is being represented in the complaint.
- The supplier receives a notification regarding the complaint and is given the opportunity to provide a **public response**.
- The consumer can submit an evaluation after receiving a response. If they do not receive a response, a consumer can submit an evaluation after **3 days** for suppliers which answer less than 50% of complaints, or after **30 days** for suppliers which answer more than 50% of complaints.
- Evaluations are **publicly accessible** and incorporated into the company's reputation section of the website.
- A consumer can request to remove their complaint from the platform and it will be deactivated within **24 hours**.

Legal questions

- Users of Reclame AQUI are covered by its [Terms of Use](#).

Enforcement

- The outcome is **non-binding**.
- There are no other particular enforcement policies.

TalkDD

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

TalkDD is the Thailand Arbitration Centre's (THAC) ODR platform for negotiation, mediation, and arbitration of disputes.

- The platform is sponsored, maintained, and funded by the THAC.

Criteria

- The platform is used by **mutual agreement** of the parties.
- The platform may be used regardless of **nationality or location**.

Accessibility

Parties can register a claim with TalkDD using its [website](#).

- TalkDD is available in **Thai** and **English**.
- There is an **application fee** to lodge a claim.

Process

- A party must register on the TalkDD platform by filling out personal information. They will receive an email with a one-time password to confirm their registration.
- Once a profile is set up, a party can register a claim.
- A party chooses between three forms of dispute resolution: **negotiation, mediation, and arbitration**.
- They select the category of their dispute, provide written details of their claim, and upload any relevant files. They then invite the other party and a mediator. The party must pay a **fee** for the invitation to be sent.

- The party receiving the claim will be invited to view the details of the claim and may accept or reject. They can also choose a new mediator.
- If parties agree, the process is conducted through the TalkDD platform. This includes functions such as chat room, videoconference, and calendar.
- If parties reach an agreement, they can use TalkDD's **contracting tool** to draft the terms of settlement. Only parties can draft the agreement, and the mediator can provide an opinion or suggestions.
- The agreement is signed digitally and becomes enforceable.
- If parties have chosen arbitration, an arbitrator will decide the final terms and result of the claim.

Legal questions

- Participation is based on **consent**.
- Applicable law is the **law of Thailand**.
- Services offered by TalkDD are governed by [THAC Rules](#) on mediation and arbitration.

Enforcement

- Agreements are signed by both parties and submitted to the platform. They become **legally binding** agreements that may be referred to.
- THAC is not involved in the enforcement of agreements reached by parties.
- Arbitral awards are enforceable under the New York Convention.

Turismo de Portugal

[Visit the Website](#)

Overview	Criteria	Accessibility	Process	Legal questions	Enforcement
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Overview

The **Arbitral Commission of Turismo de Portugal** assists with claims requesting reimbursement under the **Travel and Tourism Guarantee Fund (FGVT)**.

- The platform is sponsored and maintained by Turismo de Portugal.
- The Arbitral Commission is an entity governed by [Law No 144/2015 of the Portuguese Republic of 8 September 2015](#) on the alternative resolution of consumer disputes and by [Law No 63 /2011 of the Portuguese Republic of 14 December 2011](#) on voluntary arbitration.
- The FGVT has a legal basis in [Decree-Law No 61/2011 of the Portuguese Republic of 6 May 2011](#) on the access to and exercise of the activity of travel and tourism agencies and is governed by [Decree-Law No 17/2018 of the Portuguese Republic of 8 March 2018](#).

Criteria

- The platform may be used by travellers for disputes arising from a breach of contract by travel and tourism agencies in Portugal (both incoming and outgoing).
- The platform may only be used by travellers that are resident in Portugal or other EU/EEA countries.
- Claims must relate to **reimbursement of payments** made by travellers in cases of **services not provided due to insolvency** of the travel and tourism agency, or in case of **defective provision**. Travellers may also claim reimbursement of **additional expenses** incurred by them in these cases.

Accessibility

- Parties can submit an application to the Arbitral Commission using its [online form](#).
- The form is accessible in **Portuguese** and **English**.
- Submitting an application is **free**. The Arbitral Commission charges an administrative fee for each case that reverts to the FGVT.

Process

- A traveller must **register** on the Turismo de Portugal. They can then submit an application requesting the intervention of Arbitral Commission through the online form.
- The application must include documents and information about the travel and tourism agencies involved.
- The application must be made within **60 days** after the end of the trip, the cancellation of the trip, the date of knowledge of the impossibility of the trip, or the closure of the agency.
- If the online form is unavailable or not accessible, the form can be sent via email or post.
- The Arbitral Commission will be convened within **10 days** after the application is submitted.
- The Arbitral Commission will deliberate within **20 days** and make a decision.
- Following a decision, Turismo de Portugal will notify the travel and tourism agency responsible. They must pay the owed amount within **10 days**.
- If payment is not made within the 10 days, the payment will be made by FGVT.

Legal questions

- Travellers may be legally represented before the Arbitral Commission.
- The FGVT is liable for the payment following the decision of the Arbitral Commission. The FGVT will make a payment **directly to the travellers**.
- The platform is covered by the EU [General Data Protection Regulation](#) (GDPR).

Enforcement

- The decision of the Arbitral Commission is **final**.
- Travellers and travel and tourism agencies may also conclude a settlement agreement, which may be ratified by the Arbitral Commission.

Part Two: Examples of Common Claims Made by Tourists and Visitors

The following are examples of common claims made by tourists and visitors, and how HCCH Conventions and select other international and regional instruments may assist in access to justice. While these scenarios do not consider domestic private international law instruments or other national or regional rules which may be relevant to individual cases, it does not intend to preclude their potential application.

These examples are merely indicative and are not legal advice. They should not be read as recommending resolving claims through dispute resolution or any specific process for dispute resolution. Individuals may wish to consider seeking legal advice, should they decide to make a claim.

Each scenario includes two examples. For the first example, in an effort to be as accessible as possible, countries were selected based on popular incoming and outgoing tourist flows.¹⁵ For the second example, in an effort to show the maximum utility of existing HCCH and other international Conventions, countries were selected based, first, on being party to relevant applicable Conventions, and, second, on having similar legal systems or language, or being neighbourly, to those countries with popular incoming and outgoing tourist flows but that are not parties to the relevant applicable Conventions. The examples are purely hypothetical.

More information on the HCCH Conventions and other regional and international instruments referred to in the examples are included at the end.

For ODR platforms that may assist in dispute resolution, please see Part One.

¹⁵ Based on data from UNWTO Tourism Data Dashboard, available at < <https://www.unwto.org/unwto-tourism-dashboard> >.

Injury at a hotel overseas

A short, hypothetical example on how HCCH Conventions and other international instruments may assist a tourist or visitor who suffers an injury at accommodation abroad. The following should not be read as a checklist for action and must not exclude seeking proper legal advice tailored to the individual situation and relevant legal framework. This example is written in a pragmatic way to describe scenarios in which an injured party may benefit from HCCH Conventions and other international instruments or an ODR platform to pursue legal rights and interests in connection with the injury.

Example A: China-France-United States of America

- (i) A lives in Shanghai, China. She booked a hotel in Paris, France for a holiday.
 - (ii) To book the hotel, A used a booking website. The company that owns the booking website is incorporated in the United States of America.
 - (iii) To make the booking, A entered the destination and dates of travel and picked a hotel from a list. To confirm the booking, A had to enter payment details, including her name, email, and credit card. The website asked A to confirm her details and agree to the terms and conditions of the booking.
 - (iv) When A clicked “confirm”, the money for the hotel was charged to her credit card. She also received an email with confirmation of the booking.
 - (v) During her stay at the hotel, A slipped and fell when she was walking down the stairs into the lobby. The stairs were wet as they had recently been mopped, but there was no caution sign to warn the guests. A suffered an injury to her head and neck due to the fall.
 - (vi) A was taken to the hospital in France and received emergency treatment.
 - (vii) A should first check her travel and other insurances, as well as domestic consumer protection laws, to see if her accident is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. A should also check the policy of the booking website.
 - (viii) After it was safe to travel, A returned to China and continued treatment.
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- (ix) A should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
 - (x) If A chooses to file a claim for damages in China against the hotel in France and the booking website in the United States, documents would typically need to be served on the defendants to inform them about the proceedings. If service of process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{16, 17}
 - (xi) The Central Authority in China may transmit the documents¹⁸ to the Central Authorities in France and in the United States respectively.¹⁹

¹⁶ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the “entry into force” date for both countries.

¹⁷ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents.

¹⁸ Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

¹⁹ Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6. Each State shall organise the Central Authority in conformity with its own law.

- (xii) The authorities in France and in the United States that received the documents should then organise for them to be served in their country to the hotel and the company respectively.²⁰
- (xiii) Once the relevant documents have been served on the defendants, the proceedings in China may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the hotel and the company do not participate in the proceedings.²¹
- (xiv) If the case continues in the Chinese court, evidence may be needed from France and the United States. The **HCCH 1970 Evidence Convention** may apply.^{22, 23}
- (xv) The Chinese court may send a request²⁴ to the Central Authority in France and in the United States respectively, asking for the evidence (e.g., a witness statement or documents) that they may need.²⁵

²⁰ Art. 5:
The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -
a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.
Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

²¹ Art. 15:
Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

²² Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the "entry into force" date for both countries.

²³ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for the taking of evidence under the HCCH 1970 Evidence Convention. There are other channels for the taking of evidence abroad.

²⁴ Art. 1:
In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

²⁵ Art. 2:

- (xvi) The authorities in France and in the United States that received the request will organise for the evidence to be taken and transmitted back to the Chinese court.
- (xvii) If the evidence is taken by one of these methods, the Chinese court may include this evidence when making its decision.
- (xviii) The Chinese court may make a decision which requires the hotel and the company to pay money to **A** for the damages that she suffered.
- (xix) For any decision made in China to be recognised and enforced in another country, including France and the United States, **A** would have to refer to the law that applies in each country.²⁶

Other Scenarios

If **A** chose to make a claim in France instead of China, she may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the **HCCH 1980 Access to Justice Convention**, and agreements between the **Commonwealth of Independent States**, **MERCOSUR**, and countries party to the **European Agreement on the Transmission of Applications for Legal Aid (1977)**. Both France and China would need to be party to the same Convention for **A** to receive legal aid. Unfortunately, none of these Conventions apply to this case and **A** would have to rely on other legal frameworks.

*A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.
Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.*

²⁶ The 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for China, France, or the United States.

Example B: Belarus-Kazakhstan-Brazil

- (i) **B** lives in Minsk, Belarus. She booked a hotel in Nur-Sultan, Kazakhstan for a holiday.
 - (ii) To book the hotel, **B** used a booking website. The company that owns the booking website is incorporated in Brazil.
 - (iii) To make the booking, **B** entered the destination and dates of travel and picked a hotel from a list. To confirm the booking, **B** had to enter payment details, including her name, email, and credit card. The website asked **B** to confirm her details and agree to the terms and conditions of the booking.
 - (iv) When **B** clicked “confirm”, the money for the hotel was charged to her credit card. She also received an email with confirmation of the booking.
 - (v) During her stay at the hotel, **B** slipped and fell when she was walking down the stairs into the lobby. The stairs were wet as they had recently been mopped, but there was no caution sign to warn the guests. **B** suffered an injury to her head and neck due to the fall.
 - (vi) **B** was taken to the hospital in Kazakhstan and received emergency treatment.
 - (vii) **B** should first check her travel and other insurances, as well as domestic consumer protection laws, to see if her accident is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. **B** should also check the policy of the booking website.
 - (viii) After it was safe to travel, **B** returned to Belarus and continued treatment.
-
- (ix) **B** should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
 - (x) If **B** chooses to file a claim for damages in Belarus against the hotel in Minsk and the booking website in Brazil, documents would typically need to be served on the defendants to inform them about the proceedings. If service of process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{27, 28}
 - (xi) The Central Authority in Belarus may transmit the documents²⁹ to the Central Authorities in Kazakhstan and in Brazil respectively.³⁰
 - (xii) The authorities in Kazakhstan and in Brazil that received the documents should then organise for them to be served in their country to the hotel and the company respectively.³¹

²⁷ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the “entry into force” date for both countries.

²⁸ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents.

²⁹ Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

³⁰

Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

³¹

Art. 5:

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

- (xiii) Once the relevant documents have been served on the defendants, the proceedings in Belarus may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the hotel and the company do not participate in the proceedings.³²
- (xiv) If the case continues in the Belarusian court, evidence may be needed from Kazakhstan and Brazil. **HCCH 1970 Evidence Convention** may apply.^{33, 34}
- (xv) The Belarusian court may send a request³⁵ to the Central Authority in Kazakhstan and in Brazil respectively, asking for the evidence (e.g., a witness statement or documents) that they may need.³⁶
- (xvi) The authorities in Kazakhstan and in Brazil that received the request will organise for the evidence to be taken and transmitted back to the Belarusian court.
- (xvii) If the evidence is taken by one of these methods, the Belarusian court may include this evidence when making its decision.
- (xviii) The Belarusian court may make a decision which requires the hotel and the company to pay money to **B** for the damages that she suffered.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

³² Art. 15:

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

- a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or*
 - b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,*
- and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.*

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

- a) the document was transmitted by one of the methods provided for in this Convention,*
- b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,*
- c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.*

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

³³ Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the "entry into force" date for both countries.

³⁴ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for the taking of evidence under the HCCH 1970 Evidence Convention. There are other channels for the taking of evidence abroad.

³⁵ Art. 1:

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

³⁶

Art. 2:

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

- (xix) For any decision made in Belarus to be recognised and enforced in another country, including Kazakhstan and Brazil, **B** would have to refer to the law that applies in each country.³⁷

Other Scenarios

If **B** chose to make a claim in Kazakhstan instead of Belarus, she may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. **B** could receive legal aid based on the **HCCH 1980 Access to Justice Convention**³⁸ or the **1993 Minsk Convention** as both Belarus and Kazakhstan are parties.

Under the **HCCH 1980 Access to Justice Convention**, **B** may travel to Kazakhstan and be given the same legal aid as if she was a Kazakh national,³⁹ or stay in Belarus and submit a legal aid application through the Central Authority in Belarus which will be transmitted to the Central Authority in Kazakhstan.⁴⁰ The Kazakh court cannot charge any extra expenses to **B** just because she is from Belarus.⁴¹ If **B** loses the case in Kazakhstan, any payment of costs may then easily be enforced in other countries.⁴² **B** will have the same access to copies or extracts of documents that are kept in public registers in Kazakhstan as a Kazakh national.⁴³

As Brazil is also a party to the **HCCH 1980 Access to Justice Convention**, **B** has the same option to receive legal aid in Brazil.

³⁷ The 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for Belarus, Kazakhstan, or Brazil.

³⁸ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The application must be after the “entry into force” date for both countries.

³⁹ Art. 1:

Nationals of any Contracting State and persons habitually resident in any Contracting State shall be entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Persons to whom paragraph 1 does not apply, but who formerly had their habitual residence in a Contracting State in which court proceedings are to be or have been commenced, shall nevertheless be entitled to legal aid as provided by paragraph 1 if the cause of action arose out of their former habitual residence in that State.

In States where legal aid is provided in administrative, social or fiscal matters, the provisions of this Article shall apply to cases brought before the courts or tribunals competent in such matters.

⁴⁰

Art. 5:

Where the applicant for legal aid is not present in the requested State, he may submit his application to a transmitting authority in the Contracting State where he has his habitual residence, without prejudice to any other means open to him of submitting his application to the competent authority in the requested State.

The application shall be in the form of the model annexed to this Convention and shall be accompanied by any necessary documents, without prejudice to the right of the requested State to require further information or documents in appropriate cases.

Any Contracting State may declare that its receiving Central Authority will accept applications submitted by other channels or methods.

⁴¹ Art. 14:

No security, bond or deposit of any kind may be required, by reason only of their foreign nationality or of their not being domiciled or resident in the State in which proceedings are commenced, from persons (including legal persons) habitually resident in a Contracting State who are plaintiffs or parties intervening in proceedings before the courts or tribunals of another Contracting State.

The same rule shall apply to any payment required of plaintiffs or intervening parties as security for court fees.

⁴² Art. 15:

An order for payment of costs and expenses of proceedings, made in one of the Contracting States against any person exempt from requirements as to security, bond, deposit or payment by virtue of Article 14 or of the law of the State where the proceedings have been commenced shall, on the application of the person entitled to the benefit of the order, be rendered enforceable without charge in any other Contracting State.

⁴³ Art. 18:

Nationals of any Contracting State and persons habitually resident in any Contracting State may obtain in any other Contracting State, on the same terms and conditions as its nationals, copies of or extracts from entries in public registers and decisions relating to civil or commercial matters and may have such documents legalised, where necessary.

Lost baggage

A short, hypothetical example on how HCCH Conventions and other international instruments may assist a tourist or visitor whose baggage is lost by a common carrier while traveling internationally. The following should not be read as a checklist for action and must not exclude seeking proper legal advice tailored to the individual situation and relevant legal framework. This example is written in a pragmatic way to describe scenarios in which an injured party may benefit from HCCH Conventions and other international instruments or an ODR platform to pursue legal rights and interests in connection with the injury.

Example C: Canada-Hong Kong SAR, China

- (i) **C** lives in Vancouver, Canada. She booked a flight on Hong Kong's flagship airline to visit Hong Kong SAR, China (HKSAR) for a holiday.
 - (ii) **C** booked her flight directly using the airline's website. When she bought her ticket, she also paid for two checked bags to be flown with her on her journey.
 - (iii) After arriving at the airport in Vancouver, **C** went to the service counter for the airline managing her flight and went through the procedure for checking her bag into her flight. An attendant for the airline placed her bags in an area to be taken onto the plane.
 - (iv) **C** then boarded her flight to HKSAR.
 - (v) When **C** arrived in HKSAR, she went to retrieve her baggage. After waiting for some time, her baggage did not appear. She spoke with a representative for the airline, who told her to go to her hotel and that the airline would contact her when they had located her baggage.
 - (vi) The following day, **C** received a phone call from the airline informing her that her baggage had been lost. The airline did not offer any compensation or other benefit for the loss.
 - (vii) **C** should first check her travel and other insurances, as well as domestic consumer protection laws, to see if her loss is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. **C** should also check the policy of the booking website.
 - (viii) After the end of her holiday, **C** returned to Canada.
-
- (ix) **C** should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
 - (x) If **C** chooses to file a claim for damages in Canada against the Hong Kong airline for the loss of her baggage, documents would typically need to be served on the defendant to inform them about the proceedings. If service of process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{44, 45}
 - (xi) The Central Authority in Canada may transmit the documents⁴⁶ to the Central Authority in HKSAR.⁴⁷

⁴⁴ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the "entry into force" date for both countries.

⁴⁵ This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents. A local lawyer will be able to help with advice on these other channels.

⁴⁶ Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

⁴⁷

Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

- (xii) The authorities in HKSAR that received the documents should then organise for them to be served in their country to the airline.⁴⁸
- (xiii) Once the relevant documents have been served on the defendants, the proceedings in Canada may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the airline does not participate in the proceedings.⁴⁹
- (xiv) If the case continues in the Canadian court, evidence may be needed from HKSAR concerning C's baggage and the airline's procedures. To do this, C will have to refer to domestic law.⁵⁰
- (xv) Because HKSAR and Canada are party to the [Convention for the Unification of Certain Rules for International Carriage by Air \(1999\)](#), they both have domestic provisions for the protection of baggage.⁵¹ This means that C may rely upon the laws implementing the Convention when having her case heard in a Canadian court. C may reference Canada's law regarding compensation for lost

⁴⁸ Art. 5:
The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -
a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.
Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.
If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.
That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

⁴⁹ Art. 15:
Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -
a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,
and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.
Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -
a) the document was transmitted by one of the methods provided for in this Convention,
b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.
Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

⁵⁰ The HCCH 1970 Evidence Convention would assist with the taking of evidence abroad. Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the "entry into force" date for both countries. Canada is not a party to the Convention and it will not apply.

⁵¹ Art. 17:
The carrier liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

or damaged baggage.⁵² If the case were instead being heard in HKSAR, she would be able to do the same, citing the relevant provisions of the law implementing the Convention there.⁵³

- (xvi) The Canadian court may make a decision which requires the airline to pay money to **C** for the damages that she suffered.
- (xvii) For any decision made in Canada to be recognised and enforced in another country, including HKSAR, **C** would have to refer to the law that applies in each country.⁵⁴

Other Scenarios

If **C** chose to make a claim in HKSAR instead of Canada, she may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the **HCCH 1980 Access to Justice Convention**, and agreements between the **Commonwealth of Independent States**, **MERCOSUR**, and countries party to the **European Agreement on the Transmission of Applications for Legal Aid (1977)**. Both Canada and China (HKSAR) would need to be party to the same Convention for **C** to receive legal aid. Unfortunately, none of these Conventions apply to this case and **C** would have to rely on other legal frameworks.

Example D: Argentina-Italy

- (i) **D** lives in Buenos Aires, Argentina. She contracted an Italian travel agent who arranged for her travel on Italy's flagship airline to visit Florence for a holiday.
 - (ii) The travel agent booked her flight directly using the airline's website. When the travel agent booked the ticket, she also paid for two checked bags to be flown with **D** on her journey.
 - (iii) After arriving at the airport in Buenos Aires, **D** went to the service counter for the airline managing her flight and went through the procedure for checking her bag into her flight. An attendant for the airline placed her bags in an area to be taken onto the plane.
 - (iv) **D** then boarded her flight to Florence.
 - (v) When **D** arrived in Italy, she went to retrieve her baggage. After waiting for some time, her baggage did not appear. She spoke with a representative for the airline, who told her to go to her hotel and that the airline would contact her when they had located her baggage.
 - (vi) The following day, **D** received a phone call from the airline informing her that her baggage had been lost. The airline did not offer any compensation or other benefit for the loss.
 - (vii) **D** should first check her travel and other insurances, as well as domestic consumer protection laws, to see if her loss is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. **D** should also check the policy of the booking website.
 - (viii) After the end of her holiday, **D** returned to Argentina.
-
- (ix) **D** should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.

⁵² Carriage by Air Act (R.S.C., 1985, c. C-26), Chapter III, Article 17, paragraph 2.
The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

⁵³ Carriage by Air Ordinance of 5 February 1997, Chapter III, Article 18, paragraph 1.
The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

⁵⁴ The HCCH 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for the HKSAR or Canada.

- (x) If **D** chooses to file a claim for damages in Argentina against Italy's flagship airline and the travel agent, documents would typically need to be served on the defendants to inform them about the proceedings. If service of process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{55, 56}
- (xi) The Central Authority in Argentina may transmit the documents⁵⁷ to the Central Authority in Italy.⁵⁸
- (xii) The authorities in Italy that received the documents should then organise for them to be served in their country to the airline and the travel agent respectively.⁵⁹
- (xiii) Once the relevant documents have been served on the defendants, the proceedings in Argentina may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the airline does not participate in the proceedings.⁶⁰

⁵⁵ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the "entry into force" date for both countries.

⁵⁶ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents.

⁵⁷ Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

⁵⁸

Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

⁵⁹

Art. 5:

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

⁶⁰

Art. 15:

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

- (xiv) If the case continues in the Argentine court, evidence may be needed from Italy concerning D's baggage and the airline's procedures. The **HCCH 1970 Evidence Convention** may apply.^{61, 62}
- (xv) The Argentine court may send a request⁶³ to the Central Authority in Italy asking for the evidence (e.g., a witness statement or documents) that they may need.⁶⁴
- (xvi) The authorities in Italy that received the request will organise for the evidence to be taken and transmitted back to the Argentine court.
- (xvii) If the evidence is taken by one of these methods, the Argentine court may include this evidence when making its decision.
- (xviii) Because Argentina and Italy are party to the **Convention for the Unification of Certain Rules for International Carriage by Air (1999)**, they both have domestic provisions for the protection of baggage. This means that D may rely upon the laws implementing the Convention when having her case heard in an Argentine court. D may reference Argentina's law regarding compensation for lost or damaged baggage.⁶⁵ If the case were instead being heard in Italy, she would be able to do the same, citing the relevant provisions of the law implementing the Convention there.⁶⁶
- (xix) D may also make a claim under the **International Convention on Travel Contracts (CCV) (1970)** against the travel agent who booked her flight⁶⁷ for the loss of her baggage.⁶⁸
- (xx) The Argentine court may make a decision which requires the airline and the travel agent to pay money to D for the damages that she suffered.

⁶¹ Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the "entry into force" date for both countries.

⁶² How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for the taking of evidence under the HCCH 1970 Evidence Convention. There are other channels for the taking of evidence abroad.

⁶³ Art. 1:

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

⁶⁴

Art. 2:

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

⁶⁵ See [Ley 26451/2008](#), implementing the exact language of the Convention into Argentine law.

⁶⁶ Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, Article 3, paragraph 1.

The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.

⁶⁷ Art. 2:

1. This Convention shall apply to any travel contract concluded by a travel organizer or intermediary, where his principal place of business or, failing any such place of business, his habitual residence, or the place of business through which the travel contract has been concluded, is located in a Contracting State.

2. This Convention shall apply without prejudice to any special law establishing preferential treatment for certain categories of travellers.

⁶⁸ Art 15:

1. Where the travel organizer entrusts to a third party the provision of transportation, accommodation or other services connected with the performance of the journey or sojourn, he shall be liable for any loss or damage caused to the traveller as a result of total or partial failure to perform such services, in accordance with the rules governing such services. The travel organizer shall be liable in accordance with the same rules for any loss or damage caused to the traveller during the performance of the services, unless the travel organizer proves that he has acted as a diligent travel organizer in the choice of the person or persons performing the service.

- (xxi) For any decision made in Argentina to be recognised and enforced in another country, including Italy, **D** would have to refer to the law that applies in each country.⁶⁹

Other Scenarios

If **D** chose to make a claim in Italy instead of Argentina, she may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the **HCCH 1980 Access to Justice Convention**, and agreements between the **Commonwealth of Independent States**, **MERCOSUR**, and countries party to the **European Agreement on the Transmission of Applications for Legal Aid (1977)**. Both Argentina and Italy would need to be party to the same Convention for **D** to receive legal aid. Unfortunately, none of these Conventions apply to this case and **D** would have to rely on other legal frameworks.

Cruise cancelled due to weather

A short, hypothetical example on how HCCH Conventions and other international instruments may assist a tourist or visitor who reserves a cruise that is otherwise disrupted while traveling abroad. The following should not be read as a checklist for action and must not exclude seeking proper legal advice tailored to the individual situation and relevant legal framework. This example is written in a pragmatic way to describe scenarios in which an injured party may benefit from HCCH Conventions and other international instruments or an ODR platform to pursue legal rights and interests in connection with the injury.

Example E: Republic of Korea-France

- (i) **E** lives in Seoul, Republic of Korea. He booked a cruise through a company that is incorporated in France, and that operates cruises that begin on the French coast.
 - (ii) To book the cruise, **E** used the website of the cruise ship operator. On this website, he selected the cruise he wanted to take, entered his dates of travel, his contact information, and his payment information. The website asked **E** to confirm his details and agree to the terms and conditions of the booking.
 - (iii) When **E** clicked “confirm”, the money for the cruise was charged to his credit card. He also received an email with confirmation of the booking.
 - (iv) **E** then flew from Republic of Korea to France. He stayed in a hotel for one night and began his cruise the next day.
 - (v) **E** boarded the ship in the morning. The cruise was meant to last several days. However, only hours after the ship’s departure, the ship encountered bad weather and was forced to return to port. It was unclear when the weather was going to change to make travel by ship safe again.
 - (vi) The cruise was cancelled. **E** was not offered compensation or other benefit for his loss.
 - (vii) **E** should first check his travel and other insurances, as well as domestic consumer protection laws, to see if his loss is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. **E** should also check the policy of the booking website.
 - (viii) Unable to travel on his cruise, **E** returned to Republic of Korea.
-
- (ix) **E** should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
 - (x) If **E** chooses to file a claim for damages in the Republic of Korea against the French cruise ship operator, documents would typically need to be served on the defendant to inform them about the

⁶⁹ The 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for Argentina or Italy.

proceedings. If service of process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{70, 71}

- (xi) The Central Authority in the Republic of Korea may transmit the documents⁷² to the Central Authority in France.⁷³
- (xii) The authorities in France that received the documents should then organise for them to be served in their country to the cruise ship operator.⁷⁴
- (xiii) Once the relevant documents have been served on the defendants, the proceedings in the Republic of Korea may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the cruise ship operator does not participate in the proceedings.⁷⁵

⁷⁰ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the “entry into force” date for both countries.

⁷¹ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents.

⁷² Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

⁷³

Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

⁷⁴

Art. 5:

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

⁷⁵

Art. 15:

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

- (xiv) If the case continues in the Korean court, evidence may be needed from France. The **HCCH 1970 Evidence Convention** may apply.^{76, 77}
- (xv) The Korean court may send a request⁷⁸ to the Central Authority in France asking for the evidence (e.g., a witness statement or documents) that they may need.⁷⁹
- (xvi) The authorities in France that received the request will organise for the evidence to be taken and transmitted back to the Korean court.
- (xvii) If the evidence is taken by one of these methods, the Korean court may include this evidence when making its decision.
- (xviii) The Korean court may make a decision which requires the cruise ship operator to pay money to E for the damages that he suffered.
- (xix) For a decision made in the Republic of Korea to be recognised and enforced in another country, including France, E would have to refer to the law that applies in each country.⁸⁰

Other Scenarios

If E chose to make a claim in France instead of the Republic of Korea, he may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the **HCCH 1980 Access to Justice Convention**, and agreements between the **Commonwealth of Independent States**, **MERCOSUR**, and countries party to the **European Agreement on the Transmission of Applications for Legal Aid (1977)**. Both the Republic of Korea and France would need to be party to the same Convention for E to receive legal aid. Unfortunately, none of these Conventions apply to this case and E would have to rely on other legal frameworks.

⁷⁶ Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the “entry into force” date for both countries.

⁷⁷ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for the taking of evidence under the HCCH 1970 Evidence Convention. There are other channels for the taking of evidence abroad.

⁷⁸ Art. 1:

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

⁷⁹

Art. 2:

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

⁸⁰ The 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for the Republic of Korea or France.

Example F: Mexico-Denmark

- (i) F lives in Guadalajara, Mexico. He booked a cruise through a company that is incorporated in Denmark, and that operates cruises that begin on the Danish coast.
 - (ii) To book the cruise, F used the website of the cruise ship operator. On this website, he selected the cruise he wanted to take, entered his dates of travel, his contact information, and his payment information. The website asked F to confirm his details and agree to the terms and conditions of the booking.
 - (iii) When F clicked “confirm”, the money for the cruise was charged to his credit card. He also received an email with confirmation of the booking.
 - (iv) F then flew from Mexico to Denmark. He stayed in a hotel for one night and began his cruise the next day.
 - (v) F boarded the ship in the morning. The cruise was meant to last several days. However, only hours after the ship’s departure, the ship encountered bad weather and was forced to return to port. It was unclear when the weather was going to change to make travel by ship safe again.
 - (vi) The cruise was cancelled. F was not offered compensation or other benefit for his loss.
 - (vii) F should first check his travel and other insurances, as well as domestic consumer protection laws, to see if his loss is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. F should also check the policy of the booking website.
 - (viii) Unable to travel on his cruise, F returned to Mexico.
-
- (ix) F should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
 - (x) If F chooses to file a claim for damages in Mexico against the Danish cruise ship operator, documents would typically need to be served on the defendant to inform them about the proceedings. If service of process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{81, 82}
 - (xi) The Central Authority in Mexico may transmit the documents⁸³ to the Central Authority in Denmark.⁸⁴
 - (xii) The authorities in Denmark that received the documents should then organise for them to be served in their country to the cruise ship operator.⁸⁵

⁸¹ Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the “entry into force” date for both countries.

⁸² How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents.

⁸³ Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

⁸⁴

Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

⁸⁵

Art. 5:

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

- (xiii) Once the relevant documents have been served on the defendants, the proceedings in Mexico may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the cruise ship operator does not participate in the proceedings.⁸⁶
- (xiv) If the case continues in the Mexican court, evidence may be needed from Denmark. The **HCCH 1970 Evidence Convention** may apply.^{87, 88}
- (xv) The Mexican court may send a request⁸⁹ to the Central Authority in Denmark asking for the evidence (e.g., a witness statement or documents) that they may need.⁹⁰
- (xvi) The authorities in Denmark that received the request will organise for the evidence to be taken and transmitted back to the Mexican court.
- (xvii) If the evidence is taken by one of these methods, the Mexican court may include this evidence when making its decision.
- (xviii) The Mexican court may make a decision which requires the cruise ship operator to pay money to F for the damages that he suffered.

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

⁸⁶ Art. 15:

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

⁸⁷ Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the "entry into force" date for both countries.

⁸⁸ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for the taking of evidence under the HCCH 1970 Evidence Convention. There are other channels for the taking of evidence abroad.

⁸⁹ Art. 1:

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

⁹⁰

Art. 2:

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

- (xix) For any decision made in Mexico to be recognised and enforced in another country, including Denmark, **F** would have to refer to the law that applies in each country.⁹¹

Other Scenarios

If **F** chose to make a claim in Denmark instead of Mexico, he may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the **HCCH 1980 Access to Justice Convention**, and agreements between the **Commonwealth of Independent States**, **MERCOSUR**, and countries party to the **European Agreement on the Transmission of Applications for Legal Aid (1977)**. Both Mexico and Denmark would need to be party to the same Convention for **F** to receive legal aid. Unfortunately, none of these Conventions apply to this case and **F** would have to rely on other legal frameworks.

Damage to property at hotel

A short, hypothetical example on how HCCH Conventions and other international instruments may assist a tourist or visitor whose property is damaged or stolen when left to the care of a hotel abroad. The following should not be read as a checklist for action and must not exclude seeking proper legal advice tailored to the individual situation and relevant legal framework. This example is written in a pragmatic way to describe scenarios in which an injured party may benefit from HCCH Conventions and other international instruments or an ODR platform to pursue legal rights and interests in connection with the injury.

Example G: Russia-Turkey

- (i) **G** lives in St. Petersburg, Russia. She booked a hotel in Istanbul, Turkey for a holiday.
 - (ii) Upon arrival in Istanbul, **G** checked in to her hotel and deposited her belongings in her reserved room. This included several valuable items, including jewellery and Turkish lira in cash to use during her holiday.
 - (iii) **G** spoke to the concierge of the hotel who, as part of the standard service offered by the hotel, agreed to keep **G**'s valuables in a safe.
 - (iv) After several hours, **G** returned to the hotel and asked for her valuables to be returned from the hotel's safe. However, the hotel staff informed her that the items she left had gone missing.
 - (v) The hotel staff did not take responsibility and did not offer **G** any compensation or benefit in return for her loss.
 - (vi) **G** should first check her travel and other insurances, as well as domestic consumer protection laws, to see if her loss is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. **G** should also check the policy of the booking website.
 - (vii) After the end of her holiday, **J** returned to Russia.
-
- (viii) **G** should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
 - (ix) If **G** chooses to file a claim for damages in Russia against the hotel in Istanbul, documents would typically need to be served on the defendant to inform them about the proceedings. If service of

⁹¹ The 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for Mexico or Denmark.

process requires these documents to be transmitted abroad, the **HCCH 1965 Service Convention** may apply.^{92, 93}

- (x) The Central Authority in Russia may transmit the documents⁹⁴ to the Central Authority in Turkey.⁹⁵
- (xi) The authorities in Turkey that received the documents should then organise for them to be served in their country to the hotel.⁹⁶
- (xii) Once the relevant documents have been served on the defendants, the proceedings in Russia may continue. Under the HCCH 1965 Service Convention, a decision may be made even if the hotel does not participate in the proceedings.⁹⁷

⁹² Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the “entry into force” date for both countries.

⁹³ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for transmission provided under the HCCH 1965 Service Convention. There are other channels for the transmission of documents.

⁹⁴ Art. 3:

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

⁹⁵

Art. 2:

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

Each State shall organise the Central Authority in conformity with its own law.

⁹⁶

Art. 5:

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either -

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

⁹⁷

Art. 15:

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled -

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

- (xiii) If the case continues in the Russian court, evidence may be needed from Turkey. The **HCCH 1970 Evidence Convention** may apply.^{98, 99}
- (xiv) The Russian court may send a request¹⁰⁰ to the Central Authority in Turkey asking for the evidence (e.g., a witness statement or documents) that they may need.¹⁰¹
- (xv) The authorities in Turkey that received the request will organise for the evidence to be taken and transmitted back to the Russian court.
- (xvi) If the evidence is taken by one of these methods, the Russian court may include this evidence when making its decision.
- (xvii) The Russian court may make a decision which requires the hotel to pay money to **G** for the damages that she suffered.
- (xviii) For any decision made in Russia to be recognised and enforced in another country, including Turkey, **G** would have to refer to the law that applies in each country.¹⁰²

Other Scenarios

If **G** chose to make a claim in Turkey instead of Russia, she may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the **HCCH 1980 Access to Justice Convention**, and agreements between the **Commonwealth of Independent States**, **MERCOSUR**, and countries party to the **European Agreement on the Transmission of Applications for Legal Aid (1977)**. Both Russia and Turkey would need to be party to the same Convention for **G** to receive legal aid. Unfortunately, none of these Conventions apply to this case and **G** would have to rely on other legal frameworks.

Example H: Uruguay-Spain

- (i) **H** lives in Montevideo, Uruguay. She booked a hotel in Sevilla, Spain for a holiday.
- (ii) Upon arrival in Sevilla, **H** checked in to her hotel and deposited her belongings in her reserved room. This included several valuable items, including jewellery and euro currency in cash to use during her holiday.
- (iii) **H** spoke to the concierge of the hotel who, as part of the standard service offered by the hotel, agreed to keep **H**'s valuables in a safe.
- (iv) After several hours, **H** returned to the hotel and asked for her valuables to be returned from the hotel's safe. However, the hotel staff informed her that the items she left had gone missing.

⁹⁸ Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the "entry into force" date for both countries.

⁹⁹ How the Convention applies will depend on a range of factors and considerations, including requirements under local law. A local lawyer will be able to provide further, specific advice. This example follows the main channel for the taking of evidence under the HCCH 1970 Evidence Convention. There are other channels for the taking of evidence abroad.

¹⁰⁰ Art. 1:

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

¹⁰¹

Art. 2:

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them. Each State shall organise the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

¹⁰²

The 2019 Judgments Convention would help with the circulation and recognition and enforcement of the judgment. It has not entered into force for Russia or Turkey. At the time of writing, Russia has signed the Convention.

- (v) The hotel staff did not take responsibility and did not offer H any compensation or benefit in return for her loss.
- (vi) H should first check her travel and other insurances, as well as domestic consumer protection laws, to see if her loss is covered, subject to any contract or relevant legal framework. This includes making sure the relevant terms and conditions are followed, for example, if a claim needs to be initiated before the end of a trip, or if a police report is required to be filed in the country of injury. H should also check the policy of the booking website.
- (vii) After the end of her holiday, H returned to Uruguay.
-
- (viii) H should consult a local lawyer to provide advice on what law may apply, and how a claim may be pursued. This may involve both national law and HCCH instruments.
- (ix) If H chooses to file a claim for damages in Uruguay against the hotel in Sevilla, documents would typically need to be served on the defendant to inform them about the proceedings and evidence may need to be collected. The **Inter-American Convention on Letters Rogatory (1975)** may apply.¹⁰³ The Convention provides individuals with the means to carry out the procedures of service of process abroad and the taking of evidence in a manner similar to that of the HCCH Conventions.¹⁰⁴
- (x) In order to utilise the Convention, H may submit her request through the Central Authority in Uruguay, which would execute a Letter Rogatory to be transmitted to the Central Authority in Spain. Done through the Convention, this process will satisfy the service requirements and facilitate the collection of evidence for the Uruguayan proceedings.
- (xi) In court, H may rely upon the **Convention on the Liability of Hotel-keepers concerning the Property of their Guests (1962)**. The Convention applies in any scenario in which a guest at a hotel leaves their belongings with a hotel-keeper, or with a person for whom the hotel-keeper is responsible, and those belongings are either damaged, destroyed, or lost.¹⁰⁵ The Convention has been implemented by domestic legislation in Spain.¹⁰⁶

¹⁰³ The HCCH 1965 Service Convention and HCCH 1970 Evidence Convention would not apply as Uruguay is not a party.
¹⁰⁴ Art. 2:

This Convention shall apply to letters rogatory, issued in conjunction with proceedings in civil and commercial matters held before the appropriate judicial or other adjudicatory authority of one of the States Parties to this Convention, that have as their purpose:

- a. The performance of procedural acts of a merely formal nature, such as service of process, summonses or subpoenas abroad;*
- b. The taking of evidence and the obtaining of information abroad, unless a reservation is made in this respect.*

Art. 8:

Letters rogatory shall be accompanied by the following documents to be delivered to the person on whom process, summons or subpoena is being served:

- a. An authenticated copy of the complaint with its supporting documents, and of other exhibits or rulings that serve as the basis for the measure requested;*
- b. Written information identifying the judicial or other adjudicatory authority issuing the letter, indicating the time-limits allowed the person affected to act upon the request, and warning of the consequences of failure to do so;*
- c. Where appropriate, information on the existence and address of the court-appointed defense counsel or of competent legal-aid societies in the State of origin.*

¹⁰⁵

Art. 1:

(1) A hotel-keeper shall be liable for any damage to or destruction or loss of property brought to the hotel by any guest who stays at the hotel and has sleeping accommodation put at his disposal.

(2) Any property:

- (a) which is at the hotel during the time when the guest has the accommodation at his disposal;*
- (b) of which the hotel-keeper or a person for whom he is responsible takes charge outside the hotel during the period for which the guest has the accommodation at his disposal; or*
- (c) of which the hotel-keeper or a person for whom he is responsible takes charge whether at the hotel or outside it during a reasonable period preceding or following the time when the guest has the accommodation at his disposal;*

¹⁰⁶

Art. 1783 of the Civil Code of Spain:

The deposit of any personal effects introduced by travellers in inns and restaurants shall also be deemed a necessary deposit. The innkeepers or restaurateurs shall be liable for them as such depositories, provided that they or their employees should have been made aware of the personal effects introduced into their property, and that the travellers in their turn observe any precautions made by such innkeepers or their substitutes concerning the care and surveillance of such effects.

- (xii) In this case, because H left her belongings with the concierge who agreed to take care of them, the hotel is liable for the loss of H's property. H may then be compensated for the value of her property according to the scheme provided by the Convention.¹⁰⁷
- (xiii) The Uruguayan court may make a decision which requires the hotel to pay money to H for the damages that she suffered.
- (xiv) For a decision made in Uruguay to be recognised and enforced in Spain, the **HCCH 2019 Judgments Convention** may apply.¹⁰⁸
- (xv) The Judgments Convention may apply because a decision has been made about a civil matter in a Contracting State,¹⁰⁹ and no exclusions apply to this case.¹¹⁰
- (xvi) H would provide a copy of the judgment to a Spanish court¹¹¹ and the court would consider whether the judgment is eligible for recognition and enforcement. For example, if the hotel expressly consented to the jurisdiction of the court in the course of proceedings¹¹² or argued on the merits in court.¹¹³
- (xvii) If there is a basis for recognition and there are no grounds for refusal,¹¹⁴ the Spanish court may recognise and enforce the decision made in Uruguay.¹¹⁵

¹⁰⁷ Art. 1784 of the Civil Code of Spain:

The liability mentioned in the preceding article comprises any damages to the personal effects of travellers caused by both the servants and employees of the innkeepers or restaurateurs and by strangers, but not those incurred as a result of armed robbery or which are caused by another event of force majeure.

¹⁰⁸ Please note this is drafted assuming the HCCH 2019 Judgments Convention has entered into force for both Uruguay and Spain.

¹⁰⁹ Art. 1:

1. This Convention shall apply to the recognition and enforcement of judgments in civil or commercial matters. It shall not extend in particular to revenue, customs or administrative matters.

2. This Convention shall apply to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State.

¹¹⁰ Art. 2.

¹¹¹ Art. 12:

1. The party seeking recognition or applying for enforcement shall produce –

(a) a complete and certified copy of the judgment;

(b) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;

(c) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;

(d) in the case referred to in Article 11, a certificate of a court (including an officer of the court) of the State of origin stating that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.

2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.

3. An application for recognition or enforcement may be accompanied by a document relating to the judgment, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.

4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

¹¹² Art. 5:

1. A judgment is eligible for recognition and enforcement if one of the following requirements is met – ...

(e) the defendant expressly consented to the jurisdiction of the court of origin in the course of the proceedings in which the judgment was given;

¹¹³ Art. 5:

1. A judgment is eligible for recognition and enforcement if one of the following requirements is met – ...

(f) the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;

¹¹⁴ Art. 7.

¹¹⁵ Art. 4:

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. There shall be no review of the merits of the judgment in the requested State. There may only be such consideration as is necessary for the application of this Convention.

3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

Other Scenarios

If H chose to make a claim in Spain instead of Uruguay, she may wish to apply for legal aid. There are a number of international instruments and agreements that provide for foreigners to have equal access to legal aid as citizens and residents in a country. These include the [HCCH 1980 Access to Justice Convention](#), and agreements between the [Commonwealth of Independent States](#), [MERCOSUR](#), and countries party to the [European Agreement on the Transmission of Applications for Legal Aid \(1977\)](#). Both Uruguay and Spain would need to be party to the same Convention for H to receive legal aid. Unfortunately, none of these Conventions apply to this case and H would have to rely on other legal frameworks.

HCCH Conventions

The following are “pop-up” boxes that will be included alongside the examples. The highlighted colours are cross-referenced with the text.

1965 Service Convention

Service means that the person or company that is being challenged is informed of the legal proceedings and has an opportunity to participate. The 1965 Service Convention creates ways for documents to be transmitted between countries. It does this through “Central Authorities” which are responsible for making and receiving requests. [A list of the Central Authorities](#) in each Contracting Party is available on the HCCH website.

Documents can be transmitted in two ways. First, from the authority or judicial officer in one country to the Central Authority in the other country. Secondly, directly to the targeted person through diplomatic channels or through the post, in accordance with the law and policy of the sending country.

Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The service must occur after the “entry into force” date for both countries.

Contracting Parties may object to certain types of service. To check if a country where documents are being sent has objected to Article 8 (through diplomatic and consular agents) and Article 10 (through postal and other channels) check the [Status Table](#) on the HCCH website. For example, France has objected to Article 8 and this type of service would not be allowed, but it would be allowed in the United States. Neither France or the United States have objected to Article 10 and this type of service would be allowed.

1970 Evidence Convention

The 1970 Evidence Convention creates ways for evidence to be taken between countries. This may include physical evidence (such as documents and photographs) and witness testimony (when a person recalls the event). Evidence is taken through “Central Authorities” which are responsible for making and receiving requests. [A list of the Central Authorities](#) in each Contracting Party is available on the HCCH website.

Evidence can be taken in two ways. First, a letter of request from the authority or judicial officer in one country to the Central Authority in the other country. Secondly, through diplomatic channels.

Both countries need to be party to the Convention. Both countries, also, must have accepted that the Convention applies. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the two countries have accepted each other, please check the [Acceptances of Accession](#) on the HCCH website. The request must be made after the “entry into force” date for both countries.

Contracting Parties may object to certain methods for taking of evidence. To check if a country where evidence is being requested has objected to Chapter II (through diplomatic and consular agents) check the [Status Table](#) on the HCCH website. For example, neither France or the United States have objected to Chapter II and this method of collecting evidence would be allowed.

1980 Access to Justice Convention

The 1980 Access to Justice Convention provides equal access to justice to all nationals or habitual residents in another Contracting Party. This includes legal aid, security for costs, access to documents, and physical detention. It protects people in other countries from discrimination with regard to access to justice. There is a system of “Central Authorities” which can help applicants apply for legal aid in other countries. [A list of the Central Authorities](#) in each Contracting Party is available on the HCCH website.

There are four parts to the Convention. The first part supports legal aid, including how applications for legal aid can be made overseas. The second part protects foreigners from paying extra money (a security, bond or deposit) in overseas proceedings. The third part lets foreigners access documents from overseas public registers. The fourth part offers equal protection to foreigners from arrest and detention.

The Convention will apply if a person is participating in legal proceedings in a country other than their own. Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The application must be after the “entry into force” date for both countries.

2005 Choice of Court Convention

The 2005 Choice of Court Convention ensures that a “choice of court” clause in a contract is enforced. A choice of court clause is where the parties to a contract agree to settle any dispute in a specific place. The Convention has three basic rules: (1) the chosen court must hear the dispute; (2) any court that is not chosen must not hear the dispute; and (3) a judgment from the chosen court must be recognised and enforced.

The Convention does not apply to consumers. This means it will only apply to a tourist or a visitor if they are travelling for work and the employer enters any contract on their behalf.

The Convention may apply if an agreement, including booking terms and conditions, has an exclusive choice of court clause. The country of the court making the decision and the country where the decision has to be recognised and enforced should both be party to the Convention.

To check if the two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. The agreement must have been concluded after the “entry into force” date for both countries.

2019 Judgments Convention

The 2019 Judgments Convention allows for judicial decisions made by a court in one country to be recognised and enforced in another.

The Convention will only apply after a judgment is given. For a judgment to be enforced, the country that made the decision and the country where the decision is to be enforced must both be party to the Convention. The Convention will only apply between two countries if each country has not objected to establishing relations with the other. To check if two countries are party to the Convention, please check the [Status Table](#) on the HCCH website. To check if the Convention applies between two countries, please check the status on the HCCH website. The court proceedings must have started after the entry into force date.

Other International Instruments

Convention on the Liability of Hotel-keepers concerning the Property of their Guests (1962)

The Convention on the Liability of Hotel-keepers concerning the Property of their Guests details the liability of a hotel-keeper for any damage, destruction or loss of property of a guest at a hotel. It covers any property which is at the hotel during a guest's stay for which a hotel-keeper, or someone who works for the hotel-keeper, was responsible.

Contracting Parties are required to develop domestic law that conforms with these rules. This means it will apply when the country where the hotel is located is party to the Convention. To check if a country is party to the Convention, please check the [Chart of Signatures and Ratifications](#) on the Council of Europe website.

International Convention on Travel Contracts (CCV) (1970)

The International Convention on Travel Contracts (CCV) provides a set of uniform rules for travel contracts involving travel agents. It places extra obligations on the travel organiser to protect the rights and interests of the traveller. This includes responsibility for the loss and damage that is suffered while travelling as part of an organised contract.

This Convention is designed to make law consistent across countries. This means that it will apply when the country where the contract is made is party to the Convention. To check if a country is party to the Convention, please check the [Status Table](#) on the UNIDROIT website.

Inter-American Convention on Letters Rogatory (1975)

The Inter-American Convention on Letters Rogatory creates avenues for the transmission of service of process and the taking of evidence. Letters must be transmitted through "Central Authorities" which are responsible for executing requests. The Conventions covers much of the same subject matter as the HCCH 1965 Service and HCCH 1970 Evidence Conventions.

Both the country of origin of the request and the country where the request is being sent need to be party to the Convention. To check if the two countries are party to the Convention, please check the table of [Signatories and Ratifications](#) on the OAS website. The request must be made after the "entry into force" date for both countries.

European Agreement on the Transmission of Applications for Legal Aid (1977)

The European Agreement on the Transmission of Applications for Legal Aid allows a person to apply for legal aid in another Contracting Party. There is a system of transmitting and receiving authorities for these applications. The transmitting authority will also help applicants with their application.

The Convention will apply if a person needs legal aid in a country other than their own. Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Chart of Signatures and Ratifications](#) on the Council of Europe website. The application must be made after the "entry into force" date for both countries.

Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993)

The Minsk Convention is a framework for cross-border proceedings, with support for jurisdiction, service, evidence, and recognition and enforcement of judgments. It is designed to give equal access across borders to all citizens of Contracting Parties.

Part I, Section II is on the granting of legal aid in all civil, family and criminal matters. This extends to service of documents and taking of evidence. Part II, Section I is on jurisdiction and Part III is about recognition and enforcement of decisions.

The Convention will apply if a person is participating in legal proceedings in a country other than their own. Both countries need to be party to the Convention. To check if the two countries are party to the Convention, please check the [Depositary Information](#) on the Commonwealth of Independent States website.

Convention for the Unification of Certain Rules for International Carriage by Air (1999)

The Convention for the Unification of Certain Rules for International Carriage by Air (1999) (the Montreal Convention) provides a set of uniform rules relating to carriage, including of passengers, on planes. It has provisions relating to passengers, baggage, and cargo. This includes provisions on liability for damages.

This Convention is designed to make law consistent across countries. This means that it will apply when the country where the airline is based is party to the Convention. To check if a country is party to the Convention, please check the [List of Parties](#) on the ICAO website.

Agreement on the Benefit of Litigation Without Costs and Free Legal Aid between States Party to Mercosur (2000)

The MERCOSUR Agreement provides general standards and guidelines for cost-free litigation and free legal assistance. The Agreement is structured to allow nationals of MERCOSUR countries to be treated equally in other Contracting States (Art. 1) and have decisions regarding benefits to be recognised across borders (Art. 5).

The Agreement allows countries to establish their own procedures for granting these benefits (Art. 3). Whether or not a person is eligible for benefits depends on the criteria in each Contracting State (Art. 12). Once a person is deemed eligible, they are guaranteed free legal assistance (Art. 9).

The Agreement also makes certain items exempt from cost, such as any documents that are required in an application (Art. 13), any court or procedural costs after the benefit is granted (Art. 14), and general protection from repaying the court at any point (Art. 15).

The Agreement currently only applies between Brazil, Chile, and Paraguay. The Agreement will apply if a person is participating in legal proceedings in a country other than their own. Both countries need to be party to the Agreement. The application must be made after 30 August 2007, the “entry into force” date for the Agreement.

Air Passenger Rights Regulation (EC) No 261/2004

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) establishes common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights, departing to or from an EU Member State.

The Regulation entitles passengers, in principle, to a standardised flat-rate compensation if denied boarding (Art. 4), a flight is cancelled (Art. 5), or a flight is delayed for a long period (Art. 6). Compensation will not be due where a cancellation or long delay is caused by extraordinary circumstances, the long delay is less than three hours at arrival, or where the operating air carrier provides a timely re-routing of the passenger following cancellation. A passenger must be offered the choice between reimbursement of the ticket and re-routing to their final destination in case of cancellation and denied boarding and must receive refreshments and accommodation, where appropriate. Depending on the length of the delay at

departure, the passenger might also have the right to reimbursement of the ticket as well as to refreshments and accommodation, where appropriate.

More information is available on the [Your Europe website](#).

Mercosur Agreement on the Law Applicable to International Consumer Contracts (2017)

The MERCOSUR Agreement determines which law is applied in an international consumer contract. 'Consumers' are defined as natural or legal persons who use any product or service in a consumer context. 'Providers' are any entity that provide the good used by the Consumer. The consumer contracts covered by the Agreement include any contract where the Consumer was a national or resident in another country than the Provider.

Countries may choose the law that is applied to the contract, but are limited to three options: (1) the country of the Consumer, (2) the country where the contract was completed, or (3) the country where the headquarters of the Provider is located. If the law is not chosen in the contract, and the Consumer books from their home, it will default to the country of the Consumer (Art. 4). If the law is not chosen and the Consumer completes the contract outside of their country, parties can choose which law applies or the law applied is the country where the contract was completed (Art. 5).

If the law is chosen in the contract, this must be clearly expressed so that the Consumer is aware of this fact and knowingly consents to it (Art. 6). The Agreement also provides an exception for any tourism and travel contracts, meaning that these contracts will be regulated by the law of their country no matter where the contract was completed (Art. 7).

The Agreement is between Argentina, Brazil, Paraguay, and Uruguay. The Agreement will apply in proceedings in any of the Contracting States. Both countries need to be party to the Agreement. The Agreement has not entered into force.