



2018 年外国判决承认和执行公约草案
第 2 号咨询文件

香港特别行政区
律政司
国际法律科
2019 年 2 月

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2018 年外国判决承认和执行公约草案第 2 号咨询文件

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2018 年外国判决承认和执行公约草案

第 2 号咨询文件

摘要

1. 香港特别行政区(“香港特区”)政府律政司在 2016 年 10 月就《2016 年外国判决承认和执行公约草案初稿》(“《公约草案初稿》”)展开首次公众咨询。
2. 2016 年 6 月,由海牙国际私法会议(“海牙会议”)成立的特别委员会在召开首次会议后拟备《公约草案初稿》。上述首次咨询旨在收集公众对《公约草案初稿》的意见。
3. 特别委员会其后分别在 2017 年 2 月、2017 年 11 月及 2018 年 5 月举行会议。我们在拟定香港特区就这些会议所讨论的各项议题的立场时,已考虑社会各界在首次咨询中对《公约草案初稿》所表达的意见。
4. 在 2018 年 5 月的会议上,特别委员会拟备了《公约》的修订草案(“《2018 年公约草案》”),当中须进一步咨询和讨论的主要范畴以方括号标示。特别委员会的工作有所进展,并将于 2019 年 6 月中召开外交大会,以便海牙会议成员国通过经作出必要修改后的《2018 年公约草案》。
5. 如海牙会议在外交大会上通过《2018 年公约草案》,香港特区政府将先行评估有关各方的意见和《公约》定稿的条文,以考虑其是否适用于香港特区。

6. 由于预期香港特区将以中国代表团成员身分出席外交大会¹，我们现正就《2018年公约草案》和本咨询文件讨论的议题征询意见，为参加外交大会作好准备。

7. 本文件胪列《2018年公约草案》的主要待决议题，并邀请有关各方在2019年3月31日或之前提交意见。《2018年公约草案》现转载于附录，也可从海牙会议的网页²下载。本咨询文件也载于律政司的网页。³ 有关参考文件计有《2005年选择法院协议公约说明报告》（“《选择法院公约》”）⁴ 及《2018年公约草案初步说明报告修订本》⁵，后者或会在外交大会前由特别委员会报告员更新。

8. 如有意见，请在 2019年3月31日前送达香港下亚厘毕道18号律政中心中座7楼律政司国际法律科条约法律组(传真：3918 4791；电邮：ild@doj.gov.hk)。如对本议题有任何查询，请与上址律政司国际法律科条约法律组署理副首席政府律师(条约法律)陈婉冰女士联络(电话：3918 4305；电邮：lorrainechan@doj.gov.hk)

¹ 海牙會議只接受主權國為成員。

² 《2018年公約草案》載於海牙會議網頁：

<https://assets.hcch.net/docs/23b6dac3-7900-49f3-9a94-aa0ffbe0d0dd.pdf>

³ 本諮詢文件載於律政司的網頁：

https://www.doj.gov.hk/sc/public/ild_consultationPaper.html

⁴ 《2005年選擇法院協議公約說明報告》由 Trevor C Hartley 教授和 Masato Dogauchi 教授撰寫，可於以下網頁瀏覽：

http://www.hcch.net/index_en.php?act=publications.details&pid=3959

⁵ 《2018年公約草案初步說明報告修訂本》由特別委員會報告員 Francisco J. Garcimartín Alférez 教授和 Geneviève Saumier 教授擬備，可於以下網頁瀏覽：

<https://assets.hcch.net/docs/7d2ae3f7-e8c6-4ef3-807c-15f112aa483d.pdf>

背景

1. 自 1992 年以来，海牙国际私法会议(“海牙会议”)一直从事民商事跨境诉讼涉及的两个国际私法主要范畴的工作，即法院的国际司法管辖权及外国判决的承认和执行(通称“判决项目”)。⁶海牙会议起初致力制订全面的公约，但参与商谈的国家有重大分歧，致使公约规模缩减，只专注于国际案件的选择法院协议，其后达成《选择法院公约》。⁷

2. 2011 年，海牙会议的管治机构常务和政策大会(“大会”)同意应设立专家组，负责评估重启判决项目的可取之处。2012 年，大会设立工作组，以拟备有关承认和执行判决的建议，当中包括司法管辖权筛选条件，并请专家组进一步研究和讨论就司法管辖权制定相关条文是否可取和可行。鉴于工作组的工作进展良好，特别是工作组已完成拟备日后的公约的拟议初稿文本，⁸大会于是在 2016 年决定成立特别委员会，负责拟备《外国判决承认和执行公约》的草案。日后的公约主要旨在扩大寻求司法公义的途径，并藉着减低与跨境交易相关的费用和风险，利便跨境贸易和投资。由于日后的公约可以为各方带来确定性和可预期性，如全球各地广泛接纳该公约，预料可方便贸易和投资，并有利于解决国际争议。

3. 判决项目开展之初，本来一并处理判决的直接司法管辖权及承认和执行，但后来只专注处理承认和执行事宜。不过，海牙会议打算在特别委员会完成任务后，重启有关直接司法管辖权的工作。

⁶ 判决项目的详情可浏览海牙会议网页：

<https://www.hcch.net/en/projects/legislative-projects/judgments>

⁷ 《选择法院公约》可浏览海牙会议网页：

<https://assets.hcch.net/upload/text37cn.pdf>

⁸ 《外国判决承认和执行公约拟议初稿文本》可浏览海牙会议网页：

<https://assets.hcch.net/docs/01adb7d9-13f3-4199-b1d3-ca62de79360f.pdf>

日后的公约

4. 因此，日后的公约与直接司法管辖权无关，而只会着眼于缔约国彼此承认和执行判决。该公约旨在订明一方缔约国的法院承认和执行在另一方缔约国所颁布判决的最基本准则。换言之，如判决符合日后的公约列明的准则，就必须予以承认和执行。然而，如判决不符合有关准则，则被要求国可根据其国内法律，决定应否予以承认和执行，但涉及知识产权和不动产的事宜则属例外。⁹ 日后的公约将会与《选择法院公约》并行采用，互为补足。

早前的咨询

5. 专责筹备日后的公约的特别委员会在 2016 年 6 月召开首次会议，并在首次会议结束时筹备《公约草案初稿》。律政司遂于 2016 年 10 月就《公约草案初稿》文本进行公众咨询。特别委员会其后分别在 2017 年 2 月¹⁰、2017 年 11 月¹¹及 2018 年 5 月举行会议。律政司借助咨询结果拟定香港特区就这些会议所讨论的各项议题的立场。

新发展

6. 在 2018 年 5 月的会议上，特别委员会筹备了《2018 年公约草案》，当中须进一步咨询和讨论的主要范畴以方括号标示。会上普遍同意，特别委员会的工作已取得进展，并可于 2019 年年中召开外交大会，以便通过经作出必要修改后的《2018 年公约草案》。

⁹ 见《2018 年公约草案》第 6 条。

¹⁰ 特别委员会在 2017 年 2 月的会议结束时，拟备《2017 年 2 月公约草案》，该文件载于：

<https://assets.hcch.net/docs/d6f58225-0427-4a65-8f8b-180e79cafdbb.pdf>

¹¹ 特别委员会在 2017 年 11 月的会议结束时，拟备《2017 年 11 月公约草案》，该文件载于：

<https://assets.hcch.net/docs/2f0e08f1-c498-4d15-9dd4-b902ec3902fc.pdf>

香港特区的参与

7. 海牙会议只接受国家为成员。律政司代表会以中国代表团成员身分出席(在2019年6月中举行的)外交大会。预期香港特区政府会继续派出代表参与海牙会议在此项目的工作，直至其圆满结束。

8. 经外交大会修改的《2018年公约草案》一旦通过，香港特区政府便会在评估《公约》定稿的条文和有关各方的意见后，考虑其是否适用于香港特区。

《2018年公约草案》

9. 《2018年公约草案》载于本文件附录。海牙会议成员国各有不同的法律制度和权益，许多草案条款都是特别委员会各成员经深入讨论后艰难达成的折中方案。另一方面，草案仍有不少条文以方括号标示，那些都是特别委员会开会讨论过的建议、替代的选择和方案，而目前尚未取得明确共识。各成员国将在2019年6月中举行的外交大会上进一步讨论和考虑方括号内的内容。

《2018年公约草案》架构

10. 《2018年公约草案》分为四个章节，共包含32项条文。第I章首三条界定《公约》的适用范围，并为一些重要用语下定义。随后载于第II章的13项条文订明与承认和执行外国判决的依据及与拒绝承认或执行的理由相关的事项。第III章及第IV章各有八项条文分别涉及一般条款和最终条款。

主要待决议题

《公约》的适用范围

11. 《2018 年公约草案》适用于有关民商事判决的承认和执行，并且仅着眼于在缔约国之间相互承认和执行。《2018 年公约草案》第 1 及 2 条订定其适用范围，并且列明豁除事项。

12. 特别委员会认为，在日后的公约的适用范围方面，下述事项尤须进一步讨论和咨询。

(a) 私隐

13. 《2018 年公约草案》第 2(1)(l)条建议将“私隐”或“私隐(因违反各方之间合约而提起的法律程序除外)”豁除于《公约》的适用范围。这项建议豁除事项背后的理据在于，就“私隐”所作出的司法判决，通常建基于各项宪制权利之间所取得的审慎平衡，因此对许多国家而言属于敏感事项。

(b) 知识产权

14. 《2018 年公约草案》第 2(1)(m)条建议将“知识产权”或“知识产权和相类似事项”¹² 豁除于《公约》的适用范围。

15. 特别委员会在早前的会议上就如何处理日后的公约中的“知识产权”大体上确认了两主要做法。其一是将“知识产权”悉数豁除于日后的公约的适用范围，其二是将若干知识产权事宜纳入日后的公约的适用范围。前一种悉数豁除的做法是基于知识产权事宜的“地域”性质，以及对缔约国的本地法律可能带来无法预见改变的关注。后一种纳入做法包含多个方案，从悉数纳入所有知识产权事宜，以至只局部纳入若干知识产权事宜不等。

¹² 美國專家就“相類似事項”的涵義提議了若干基本核心概念，例如由主權國家認可，只限於某一特定地域，並且與無形財產相關的專有權利，可包括專利、工業外觀設計、商標、地理標誌、版權和有關權利、商業秘密及機密商業資料、植物品種權利、傳統知識等。

16. 《2018 年公约草案》第 2(1)(m)条的建议应与该草案第 5(3)、6(a)、7(1)(g)、8(3)和 11 条的相关条文一并理解。

17. 有鉴于此，相关问题包括：

- (i) 应否将“知识产权”悉数豁除于日后的公约的适用范围？若然，应否同时豁除“相类似事项”？
- (ii) 由于有关知识产权的裁决在某些司法管辖区是由主管机关而非法院作出的，因此“法院”和“裁决”的涵义应否延伸至分别涵盖“主管机关”和“由主管机关作出的裁决”？
- (iii) 应否采纳《2018 年公约草案》第 11 条的建议，即就侵犯知识产权判定的判决可予承认和 / 或执行的范围，仅限于针对在原审国蒙受的损害而判定的金钱补偿？
- (iv) 如知识产权事宜纳入日后的公约的适用范围，应否订立声明机制，让成员国选择退出这些事宜？

(c) 武装部队和执法人员的活动

18. 《2018 年公约草案》第 2(1)(n)和(o)条建议从日后的公约的适用范围豁除“武装部队的活动，包括武装部队人员执行公务时的活动”和“执法活动，包括执法人员执行公务时的活动”。这些事宜应否豁除于适用范围？就此，或可考虑应否设立声明机制让缔约国选择是否纳入或豁除这些事宜。

(d) 反垄断(竞争)事宜

19. 《2018 年公约草案》第 2(1)(p)条建议将“反垄断(竞争)事宜”豁除于适用范围。然而，这项事宜的相关问题包括：

- (i) 应从日后的公约的适用范围悉数豁除“反垄断(竞争)事宜”，或只豁除反垄断(竞争)事宜的某些方面？如采取后者做法，反垄断(竞争)事宜的哪些方面应予豁除？
- (ii) 如就反垄断(竞争)事宜判定的判决是非金钱补偿，应否拒绝承认或执行？¹³

承认和执行

20. 《2018 年公约草案》第 4 条列明有关承认和执行外国判决的一般条文。第 5 条载列承认和执行的依据(又称“间接司法管辖权”或“司法管辖权筛选条件”)清单，而第 7 条列明可拒绝承认或执行判决的理由。

(a) 共同法院

21. 特别委员会在 2018 年 5 月的会议上，讨论“共同法院”(例如欧洲法院)的判决应否视为缔约国法院的判决，受日后的公约所涵盖并可获被请求国承认和执行。有关建议现已纳入《2018 年公约草案》第 4(5)条，以待进一步讨论和审议。¹⁴

¹³ 《2018 年公约草案》第 11 条规定，“[在知识产权事宜上，就侵犯知识产权判定的判决可予[承认和]执行的范围，仅限于针对在原审国蒙受损害而判定的金钱补偿。]”视乎政策是否如是决定，可考虑加入类似条文，以豁除就反壟斷(競爭)事宜判定的判决所涉的非金钱补偿。有关建议豁除反壟斷(競爭)事宜的问题，可参阅 Cara North 女士所著题为 *The possible exclusion of anti-trust matters from the Convention as reflected in Article 2(1)(p) of the 2018 draft Convention* 的文件，可浏览：<https://assets.hcch.net/docs/dcd7c92a-d3fd-46a5-bae5-627ff1636003.pdf>

¹⁴ 特别委员会指出：

- (i) 共同法院可履行不同的角色(例如原讼、上诉)；
- (ii) 凡国际法院并非行使一国的司法管辖权，而是就国际公法事宜对各国行使司法管辖权(例如国际法院及欧洲人权法院)，则任何有关共同法院的条文均不適用於該等法院；以及

22. 《2018 年公约草案》第 4(5)条包括两部分：第一部分关于共同法院的涵义和适用范围，以及按照日后的公约的条文承认和执行共同法院的判决；第二部分包括加入或退出有关承认和执行共同法院判决安排的声明机制。就此，相关问题如下：

(i) 共同法院的判决应否视为缔约国法院的判决，并涵盖于日后的公约内？

(ii) 应否设立声明机制，容许成员国加入或退出有关承认和执行共同法院判决的安排？

一般条款

23. 下述一般条款及相关主要议题尤须在外交大会进一步审议。

(a) 就关乎政府的判决作出的声明

24. 应否容许缔约国按照《2018 年公约草案》第 20 条，声明日后的公约不适用于任何关乎政府的判决？若然，是否有需要限制声明的适用范围？举例说，现时的建议是有关声明不可把法律程序一方为国有企业的判决豁除于日后的公约的适用范围(第 20(2)条)。

(b) 与其他国际文书的关系

25. 《2018 年公约草案》第 24 条所述的“与其他国际文书的关系”，旨在处理日后的公约与在其生效之前或之后签订的条约之间的关系。该等待决问题包括：

(iii) 在共同法院席前審理執行問題甚為罕見，但關於承認的問題對共同法院仍具相關意義，對締約國的其他法院亦然。

- (i) 除“条约”外，应否也涵盖“其他国际文书”(见《2018年公约草案》第24(2)及(3)条)?
- (ii) 若某条约(或其他国际文书)在日后的公约生效之前签订，以及就该文书签订方之间而言，对某缔约国生效，则日后的公约应否影响该条约在该缔约国的适用范围(见《2018年公约草案》第24(2)条)?
- (iii) 若某条约(或其他国际文书)在日后的公约生效之后签订并对某缔约国生效，应否影响其对并非该文书签订方的缔约国第6条所载事宜(关乎专属承认和执行的基础)的义务(见《2018年公约草案》第24(3)条)?
- (iv) 应否容许或要求缔约国在声明中列入其他不受日后的公约影响的国际文书(见《2018年公约草案》第24(5)条)?

征询意见

26. 律政司现正就《2018年公约草案》征询意见。我们在拟定香港特区在各项议题的立场时，会考虑有关意见，为2019年6月中召开的外交大会作好准备。

27. 欢迎各界特别就上述主要待决议题发表意见，例如与以下各项有关的建议：

- 豁除“私隐”事宜(见上文第13段)
- 豁除“知识产权”事宜(见上文第14至17段)
- 豁除“武装部队和执法人员的活动”(见上文第18段)

- 豁除“反垄断(竞争)”事宜(见上文第 19 段)
- 扩大日后的公约的涵盖范围至包括共同法院的判决(见上文第 21 至 22 段)
- 关于“就关乎政府的判决作出的声明”的条文(见上文第 24 段)
- 关于“与其他国际文书的关系”的条文(见上文第 25 段)

28. 如有意见,请在 2019 年 3 月 31 日前送达香港下亚厘毕道 18 号律政中心中座 7 楼律政司国际法律科(传真: 3918 4791; 电邮: ild@doj.gov.hk)。如对本议题有任何查询, 请与律政司国际法律科署理副首席政府律师(条约法律)陈婉冰女士联络(电话: 3918 4305; 电邮: lorrainechan@doj.gov.hk)。

律政司
国际法律科
2019 年 2 月

2018 DRAFT CONVENTION

CHAPTER I – SCOPE AND DEFINITIONS

Article 1

Scope

1. This Convention shall apply to the recognition and enforcement of judgments relating to 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.

Article 2

Exclusions from scope

1. This Convention shall not apply to the following matters –
 - (a) the status and legal capacity of natural persons;
 - (b) maintenance obligations;
 - (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
 - (d) wills and succession;
 - (e) insolvency, composition, resolution of financial institutions, and analogous matters;
 - (f) the carriage of passengers and goods;
 - (g) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;
 - (h) liability for nuclear damage;
 - (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;
 - (j) the validity of entries in public registers;
 - (k) defamation;
 - [(l) privacy[, except where the proceedings were brought for breach of contract between the parties];]
 - [(m) intellectual property [and analogous matters];]
 - [(n) activities of armed forces, including the activities of their personnel in the exercise of their official duties;]
 - [(o) law enforcement activities, including the activities of law enforcement personnel in the exercise of official duties;]
 - [(p) anti-trust (competition) matters].
2. A judgment is not excluded from the scope of this Convention where a matter to which this Convention does not apply arose merely as a preliminary question in the proceedings in which the judgment was given, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude a judgment from the Convention, if that matter was not an object of the proceedings.
3. This Convention shall not apply to arbitration and related proceedings.
4. A judgment is not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, was a party to the proceedings.

5. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3 *Definitions*

1. In this Convention –
 - (a) “defendant” means a person against whom the claim or counterclaim was brought in the State of origin;
 - (b) “judgment” means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.
2. An entity or person other than a natural person shall be considered to be habitually resident in the State –
 - (a) where it has its statutory seat;
 - (b) under whose law it was incorporated or formed;
 - (c) where it has its central administration; or
 - (d) where it has its principal place of business.

CHAPTER II – RECOGNITION AND ENFORCEMENT

Article 4 *General provisions*

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.[This does not preclude such examination 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.
4. If a judgment referred to in paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired, the court addressed may –
 - (a) grant recognition or enforcement, which enforcement may be made subject to the provision of such security as it shall determine;
 - (b) postpone the decision on recognition or enforcement; or
 - (c) refuse recognition or enforcement.

A refusal under sub-paragraph (c) does not prevent a subsequent application for recognition or enforcement of the judgment.

[[5. For purposes of paragraph 1, a judgment given by a court common to two or more States shall be deemed to be a judgment given by a court of a Contracting State if the Contracting State has identified the common court in a declaration to that effect, and either of the following conditions are met –

- (a) all members of the common court are Contracting States whose judicial functions in relation to the relevant matter are exercised by the common court, and the judgment is eligible for recognition and enforcement under Article 5(1)(c), (e), (f), (l), or (m); or
- (b) the judgment is eligible for recognition and enforcement under another sub-paragraph of Article 5(1)[, Article 5(3),] or under Article 6, and those eligibility requirements are met in a Contracting State whose judicial functions in relation to the relevant matter are exercised by the common court.]

OR

[5. For purposes of paragraph 1, a judgment given by a court common to two or more States shall be deemed to be a judgment given by a court of a Contracting State if the Contracting State has identified the common court in a declaration to that effect, and either of the following conditions are met –

- (a) all members of the common court are Contracting States whose judicial functions in relation to the relevant matter are exercised by the common court, and the judgment is eligible for recognition and enforcement under Article 5(1)(c), (e), (f), (l), or (m); or
- (b) the judgment is eligible for recognition and enforcement under another sub-paragraph of Article 5(1)[, Article 5(3),] or under Article 6, and those eligibility requirements are met in a Contracting State whose judicial functions in relation to the relevant matter are exercised by the common court.

6. A Contracting State may declare that it shall not recognise or enforce judgments of a common court that is the object of a declaration under paragraph 5 in respect of any of the matters covered by that declaration.

or

6. The declaration referred to in paragraph 5 shall have effect only between the Contracting State that made the declaration and other Contracting States that have declared their acceptance of the declaration. Such declarations shall be deposited at the Ministry of Foreign Affairs of the Netherlands, which will forward, through diplomatic channels, a certified copy to each of the Contracting States.]]

Article 5

Bases for recognition and enforcement

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

- (a) the person against whom recognition or enforcement is sought was habitually resident in the State of origin at the time that person became a party to the proceedings in the court of origin;
- (b) the natural person against whom recognition or enforcement is sought had his or her principal place of business in the State of origin at the time that person became a party to the proceedings in the court of origin and the claim on which the judgment is based arose out of the activities of that business;
- (c) the person against whom recognition or enforcement is sought is the person that brought the claim, other than a counterclaim, on which the judgment is based;
- (d) the defendant maintained a branch, agency, or other establishment without separate legal personality in the State of origin at the time that person became a party to the proceedings in the court of origin, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;

- (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;
- (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;
- (g) the judgment ruled on a contractual obligation and it was given in the State in which performance of that obligation took place, or should have taken place, in accordance with
 - (i) the parties' agreement, or
 - (ii) the law applicable to the contract, in the absence of an agreed place of performance, unless the defendant's activities in relation to the transaction clearly did not constitute a purposeful and substantial connection to that State;
- (h) the judgment ruled on a tenancy of immovable property and it was given in the State in which the property is situated;
- (i) the judgment ruled against the defendant on a contractual obligation secured by a right *in rem* in immovable property located in the State of origin, if the contractual claim was brought together with a claim against the same defendant relating to that right *in rem*;
- (j) the judgment ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the State of origin, irrespective of where that harm occurred;
- (k) the judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and –
 - (i) at the time the proceedings were instituted, the State of origin was designated in the trust instrument as a State in which disputes about such matters are to be determined; or
 - (ii) at the time the proceedings were instituted, the State of origin was expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

This sub-paragraph only applies to judgments regarding internal aspects of a trust between persons who are or were within the trust relationship;

- (l) the judgment ruled on a counterclaim –
 - (i) to the extent that it was in favour of the counterclaimant, provided that the counterclaim arose out of the same transaction or occurrence as the claim;
 - (ii) to the extent that it was against the counterclaimant, unless the law of the State of origin required the counterclaim to be filed in order to avoid preclusion;
- (m) the judgment was given by a court designated in an agreement concluded or documented in writing or by any other means of communication which renders information accessible so as to be usable for subsequent reference, other than an exclusive choice of court agreement.

For the purposes of this sub-paragraph, an “exclusive choice of court agreement” means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one State or one or more specific courts of one State to the exclusion of the jurisdiction of any other courts.

2. If recognition or enforcement is sought against a natural person acting primarily for personal, family or household purposes (a consumer) in matters relating to a consumer contract, or against an employee in matters relating to the employee's contract of employment –

- (a) paragraph 1(e) applies only if the consent was addressed to the court, orally or in writing;
- (b) paragraph 1(f), (g) and (m) do not apply.

[3. Paragraph 1 does not apply to a judgment that ruled on an intellectual property right or an analogous right. Such a judgment is eligible for recognition and enforcement if one of the following requirements is met –

- (a) the judgment ruled on an infringement in the State of origin of an intellectual property right required to be granted or registered and it was given by a court in the State in which the grant or registration of the right concerned has taken place or, under the terms of an international or regional instrument, is deemed to have taken place[, unless the defendant has not acted in that State to initiate or further the infringement, or their activity cannot reasonably be seen as having been targeted at that State];
- (b) the judgment ruled on an infringement in the State of origin of a copyright or related right, an unregistered trademark or unregistered industrial design, and it was given by a court in the State for which protection was claimed[, unless the defendant has not acted in that State to initiate or further the infringement, or their activity cannot reasonably be seen as having been targeted at that State];
- (c) the judgment ruled on the validity[, subsistence or ownership] in the State of origin of a copyright or related right, an unregistered trademark or unregistered industrial design, and it was given by a court in the State for which protection was claimed.]

Article 6

Exclusive bases for recognition and enforcement

Notwithstanding Article 5 –

- [(a) a judgment that ruled on the [registration or] validity of an intellectual property right required to be granted or registered shall be recognised and enforced if and only if the State of origin is the State in which grant or registration has taken place, or, under the terms of an international or regional instrument, is deemed to have taken place;]
- (b) a judgment that ruled on rights *in rem* in immovable property shall be recognised and enforced if and only if the property is situated in the State of origin;
- (c) a judgment that ruled on a tenancy of immovable property for a period of more than six months shall not be recognised and enforced if the property is not situated in the State of origin and the courts of the Contracting State in which it is situated have exclusive jurisdiction under the law of that State.

Article 7

Refusal of recognition or enforcement

1. Recognition or enforcement may be refused if –

- (a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –
 - (i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
 - (ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
- (b) the judgment was obtained by fraud;

- (c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State;
- (d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court other than the court of origin;
- (e) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
- (f) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same subject matter, provided that the earlier judgment fulfills the conditions necessary for its recognition in the requested State;

[(g) the judgment ruled on an infringement of an intellectual property right, applying to that [right / infringement] a law other than the internal law of the State of origin.]

2. Recognition or enforcement may be postponed or refused if proceedings between the same parties on the same subject matter are pending before a court of the requested State, where –

- (a) the court of the requested State was seised before the court of origin; and
- (b) there is a close connection between the dispute and the requested State.

A refusal under this paragraph does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 8 *Preliminary questions*

1. A ruling on a preliminary question shall not be recognised or enforced under this Convention if the ruling is on a matter to which this Convention does not apply or on a matter referred to in Article 6 on which a court other than the court referred to in that Article ruled.

2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter to which this Convention does not apply, or on a matter referred to in Article 6 on which a court other than the court referred to in that Article ruled.

[3. However, in the case of a ruling on the validity of a right referred to in Article 6, paragraph (a), recognition or enforcement of a judgment may be postponed, or refused under the preceding paragraph, only where –

- (a) that ruling is inconsistent with a judgment or a decision of a competent authority on that matter given in the State referred to in Article 6, paragraph (a); or
- (b) proceedings concerning the validity of that right are pending in that State.

A refusal under sub-paragraph (b) does not prevent a subsequent application for recognition or enforcement of the judgment.]

Article 9 *Severability*

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.

Article 10
Damages

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.
2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

[Article 11
Non-monetary remedies in intellectual property matters

In intellectual property matters, a judgment ruling on an infringement shall be [recognised and] enforced only to the extent that it rules on a monetary remedy in relation to harm suffered in the State of origin.]

Article 12
Judicial settlements (transactions judiciaires)

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 13
Documents to be produced

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 12, a certificate of a court of the State of origin 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.

Article 14
Procedure

1. The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless this Convention provides otherwise. The court addressed shall act expeditiously.
2. The court of the requested State shall not refuse the recognition or enforcement of a judgment under this Convention on the ground that recognition or enforcement should be sought in another State.

Article 15
Costs of proceedings

1. No security, bond or deposit, however described, shall be required from a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the sole ground that such party is a foreign national or is not domiciled or resident in the State in which enforcement is sought.
2. An order for payment of costs or expenses of proceedings, made in a Contracting State against any person exempt from requirements as to security, bond, or deposit by virtue of paragraph 1 shall, on the application of the person entitled to the benefit of the order, be rendered enforceable in any other Contracting State.
3. A State may declare that it shall not apply paragraph 1 or designate by a declaration which of its courts shall not apply paragraph 1.

Article 16
Recognition or enforcement under national law

Subject to Article 6, this Convention does not prevent the recognition or enforcement of judgments under national law.

CHAPTER III – GENERAL CLAUSES

Article 17
Transitional provision

This Convention shall apply to the recognition and enforcement of judgments if, at the time the proceedings were instituted in the State of origin, the Convention was in force in that State and in the requested State.

Article 18
Declarations limiting recognition and enforcement

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the court of origin, were connected only with the requested State.

Article 19
Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.

2. With regard to that matter, the Convention shall not apply –
 - (a) in the Contracting State that made the declaration;
 - (b) in other Contracting States, where recognition or enforcement of a judgment given in a Contracting State that made the declaration is sought.

[Article 20

Declarations with respect to judgments pertaining to governments

1. A State may declare that it shall not apply this Convention to judgments arising from proceedings to which any of the following is a party –
 - (a) that State, or a person acting on behalf of that State, or
 - (b) a government agency of that State, or a person acting on behalf of such a government agency.

The declaration shall be no broader than necessary and the exclusion from scope shall be clearly and precisely defined.

2. A declaration pursuant to paragraph 1 shall not exclude from the application of this Convention judgments arising from proceedings to which an enterprise owned by a State is a party.

3. If a State has made a declaration pursuant to paragraph 1, recognition or enforcement of a judgment originating from that State may be refused by another Contracting State if the judgment arose from proceedings to which that other Contracting State, one of its government agencies, or equivalent persons to those referred to in paragraph 1 is a party, to the same extent as specified in the declaration.]

Article 21

Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 22

Review of operation of the Convention

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for –

- (a) review of the operation of this Convention, including any declarations; and
- (b) consideration of whether any amendments to this Convention are desirable.

Article 23

Non-unified legal systems

1. In relation to a Contracting State in which two or more systems of law apply in different territorial units with regard to any matter dealt with in this Convention –

- (a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

- (b) any reference to habitual residence in a State shall be construed as referring, where appropriate, to habitual residence in the relevant territorial unit;
- (c) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;
- (d) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit.

2. Notwithstanding the preceding paragraph, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

3. A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 24

Relationship with other international instruments

1. This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention.

2. This Convention shall not affect the application by a Contracting State of a treaty [or other international instrument] that was concluded before this Convention entered into force for that Contracting State [as between Parties to that instrument].

3. This Convention shall not affect the application by a Contracting State of a treaty [or other international instrument] concluded after this Convention entered into force for that Contracting State for the purposes of obtaining recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that instrument. [Nothing in the other instrument shall affect the obligations under Article 6 towards Contracting States that are not Parties to that instrument.]

4. This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention, whether adopted before or after this Convention as concerns the recognition or enforcement of judgments as between Member States of the Regional Economic Integration Organisation.

[5. A Contracting State may declare that other international instruments listed in the declaration shall remain unaffected by this Convention.]

CHAPTER IV – FINAL CLAUSES

Article 25

Signature, ratification, acceptance, approval or accession

- 1. This Convention is open for signature by all States.
- 2. This Convention is subject to ratification, acceptance or approval by the signatory States.
- 3. This Convention is open for accession by all States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 26

Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. A declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.
4. This Article shall not apply to a Regional Economic Integration Organisation.

Article 27

Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.
3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 28, paragraph 1, that its Member States will not be Parties to this Convention.
4. Any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation that is a Party to it.

Article 28

Accession by a Regional Economic Integration Organisation without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.

2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to the Member States of the Organisation.

Article 29 *Entry into force*

1. This Convention shall enter into force on the first day of the month following the expiration of [three] [six] months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 25.

2. Thereafter this Convention shall enter into force –

- (a) for each State or Regional Economic Integration Organisation subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of [three][six] months after the deposit of its instrument of ratification, acceptance, approval or accession;
- (b) for a territorial unit to which this Convention has been extended in accordance with Article 26 on the first day of the month following the expiration of [three] [six] months after the notification of the declaration referred to in that Article.

Article 30 *Declarations*

1. Declarations referred to in Articles [4,]15, 18, 19, [20,] [24,] 26 and 28 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of six months following the date on which the notification is received by the depositary.

5. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall not apply to judgments resulting from proceedings that have already been instituted before the court of origin when the declaration takes effect.

Article 31 *Denunciation*

1. This Convention may be denounced by notification in writing to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 32

Notifications by the depositary

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles [...] of the following –

- (a) the signatures, ratifications, acceptances, approvals and accessions referred to in Article 25;
- (b) the date on which this Convention enters into force in accordance with Article 29;
- (c) the notifications, declarations, modifications and withdrawals of declarations referred to in Article 30; and
- (d) the denunciations referred to in Article 31.