



**2018 年外國判決承認和執行公約草案
第 2 號諮詢文件**

香港特別行政區
律政司
國際法律科
2019 年 2 月

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2018 年外國判決承認和執行公約草案第 2 號諮詢文件

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2018 年外國判決承認和執行公約草案

第 2 號諮詢文件

摘要

1. 香港特別行政區(“香港特區”)政府律政司在 2016 年 10 月就《2016 年外國判決承認和執行公約草案初稿》(“《公約草案初稿》”)展開首次公眾諮詢。
2. 2016 年 6 月，由海牙國際私法會議(“海牙會議”)成立的特別委員會在召開首次會議後擬備《公約草案初稿》。上述首次諮詢旨在收集公眾對《公約草案初稿》的意見。
3. 特別委員會其後分別在 2017 年 2 月、2017 年 11 月及 2018 年 5 月舉行會議。我們在擬定香港特區就這些會議所討論的各項議題的立場時，已考慮社會各界在首次諮詢中對《公約草案初稿》所表達的意見。
4. 在 2018 年 5 月的會議上，特別委員會擬備了《公約》的修訂草案(“《2018 年公約草案》”)，當中須進一步諮詢和討論的主要範疇以方括號標示。特別委員會的工作有所進展，並將於 2019 年 6 月中召開外交大會，以便海牙會議成員國通過經作出必要修改後的《2018 年公約草案》。
5. 如海牙會議在外交大會上通過《2018 年公約草案》，香港特區政府將先行評估有關各方的意見和《公約》定稿的條文，以考慮其是否適用於香港特區。

6. 由於預期香港特區將以中國代表團成員身分出席外交大會¹，我們現正就《2018年公約草案》和本諮詢文件討論的議題徵詢意見，為參加外交大會作好準備。

7. 本文件臚列《2018年公約草案》的主要待決議題，並邀請有關各方在2019年3月31日或之前提交意見。《2018年公約草案》現轉載於附錄，也可從海牙會議的網頁²下載。本諮詢文件也載於律政司的網頁。³ 有關參考文件計有《2005年選擇法院協議公約說明報告》（“《選擇法院公約》”）⁴ 及《2018年公約草案初步說明報告修訂本》⁵，後者或會在外交大會前由特別委員會報告員更新。

8. 如有意見，請在 2019年3月31日前送達香港下亞厘畢道18號律政中心中座7樓律政司國際法律科條約法律組(傳真：3918 4791；電郵：ild@doj.gov.hk)。如對本議題有任何查詢，請與上址律政司國際法律科條約法律組署理副首席政府律師(條約法律)陳婉冰女士聯絡(電話：3918 4305；電郵：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/chi/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 年以來，海牙國際私法會議（“海牙會議”）一直從事民商事跨境訴訟涉及的兩個國際私法主要範疇的工作，即法院的國際司法管轄權及外國判決的承認和執行（通稱“判決項目”）。⁶ 海牙會議起初致力制訂全面的公約，但參與商談的國家有重大分歧，致使公約規模縮減，只專注於國際案件的選擇法院協議，其後達成《選擇法院公約》。⁷

2. 2011 年，海牙會議的管治機構常務和政策大會（“大會”）同意應設立專家組，負責評估重啓判決項目的可取之處。2012 年，大會設立工作組，以擬備有關承認和執行判決的建議，當中包括司法管轄權篩選條件，並請專家組進一步研究和討論就司法管轄權制定相關條文是否可取和可行。鑑於工作組的工作進展良好，特別是工作組已完成擬備日後的公約的擬議初稿文本，⁸大會於是在 2016 年決定成立特別委員會，負責擬備《外國判決承認和執行公約》的草案。日後的公約主要旨在擴大尋求司法公義的途徑，並藉着減低與跨境交易相關的費用和風險，利便跨境貿易和投資。由於日後的公約可以為各方帶來確定性和可預期性，如全球各地廣泛接納該公約，預料可方便貿易和投資，並有利於解決國際爭議。

3. 判決項目開展之初，本來一併處理判決的直接司法管轄權及承認和執行，但後來只專注處理承認和執行事宜。不過，海牙會議打算在特別委員會完成任務後，重啓有關直接司法管轄權的工作。

⁶ 判決項目的詳情可瀏覽海牙會議網頁：

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

⁷ 《選擇法院公約》可瀏覽海牙會議網頁：

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

⁸ 《外國判決承認和執行公約擬議初稿文本》可瀏覽海牙會議網頁：

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

日後的公約

4. 因此，日後的公約與直接司法管轄權無關，而只會着眼於締約國彼此承認和執行判決。該公約旨在訂明一方締約國的法院承認和執行在另一方締約國所頒布判決的最基本準則。換言之，如判決符合日後的公約列明的準則，就必須予以承認和執行。然而，如判決不符合有關準則，則被要求國可根據其國內法律，決定應否予以承認和執行，但涉及知識產權和不動產的事宜則屬例外。⁹ 日後的公約將會與《選擇法院公約》並行採用，互為補足。

早前的諮詢

5. 專責擬備日後的公約的特別委員會在 2016 年 6 月召開首次會議，並在首次會議結束時擬備《公約草案初稿》。律政司遂於 2016 年 10 月就《公約草案初稿》文本進行公眾諮詢。特別委員會其後分別在 2017 年 2 月¹⁰、2017 年 11 月¹¹及 2018 年 5 月舉行會議。律政司借助諮詢結果擬定香港特區就這些會議所討論的各項議題的立場。

新發展

6. 在 2018 年 5 月的會議上，特別委員會擬備了《2018 年公約草案》，當中須進一步諮詢和討論的主要範疇以方括號標示。會上普遍同意，特別委員會的工作已取得進展，並可於 2019 年年中召開外交大會，以便通過經作出必要修改後的《2018 年公約草案》。

⁹ 見《2018 年公約草案》第 6 條。

¹⁰ 特別委員會在 2017 年 2 月的會議結束時，擬備《2017 年 2 月公約草案》，該文件載於：

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

¹¹ 特別委員會在 2017 年 11 月的會議結束時，擬備《2017 年 11 月公約草案》，該文件載於：

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

香港特區的參與

7. 海牙會議只接受國家為成員。律政司代表會以中國代表團成員身分出席(在2019年6月中舉行的)外交大會。預期香港特區政府會繼續派出代表參與海牙會議在此項目的工作，直至其圓滿結束。

8. 經外交大會修改的《2018年公約草案》一旦通過，香港特區政府便會在評估《公約》定稿的條文和有關各方的意見後，考慮其是否適用於香港特區。

《2018年公約草案》

9. 《2018年公約草案》載於本文件附錄。海牙會議成員國各有不同的法律制度和權益，許多草案條款都是特別委員會各成員經深入討論後艱難達成的折中方案。另一方面，草案仍有不少條文以方括號標示，那些都是特別委員會開會討論過的建議、替代的選擇和方案，而目前尚未取得明確共識。各成員國將在2019年6月中舉行的外交大會上進一步討論和考慮方括號內的內容。

《2018年公約草案》架構

10. 《2018年公約草案》分為四個章節，共包含32項條文。第I章首三條界定《公約》的適用範圍，並為一些重要用語下定義。隨後載於第II章的13項條文訂明與承認和執行外國判決的依據及與拒絕承認或執行的理由相關的事項。第III章及第IV章各有八項條文分別涉及一般條款和最終條款。

主要待決議題

《公約》的適用範圍

11. 《2018年公約草案》適用於有關民商事判決的承認和執行，並且僅着眼於在締約國之間相互承認和執行。《2018年公約草案》第1及2條訂定其適用範圍，並且列明豁除事項。

12. 特別委員會認為，在日後的公約的適用範圍方面，下述事項尤須進一步討論和諮詢。

(a) 私隱

13. 《2018年公約草案》第2(1)(1)條建議將“私隱”或“私隱(因違反各方之間合約而提起的法律程序除外)”豁除於《公約》的適用範圍。這項建議豁除事項背後的理據在於，就“私隱”所作出的司法判決，通常建基於各項憲制權利之間所取得的審慎平衡，因此對許多國家而言屬於敏感事項。

(b) 知識產權

14. 《2018年公約草案》第2(1)(m)條建議將“知識產權”或“知識產權和相類似事項”¹² 豁除於《公約》的適用範圍。

15. 特別委員會在早前的會議上就如何處理日後的公約中的“知識產權”大體上確認了兩主要做法。其一是將“知識產權”悉數豁除於日後的公約的適用範圍，其二是將若干知識產權事宜納入日後的公約

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。

的適用範圍。前一種悉數豁除的做法是基於知識產權事宜的“地域”性質，以及對締約國的本地法律可能帶來無法預見改變的關注。後一種納入做法包含多個方案，從悉數納入所有知識產權事宜，以至只局部納入若干知識產權事宜不等。

16. 《2018年公約草案》第2(1)(m)條的建議應與該草案第5(3)、6(a)、7(1)(g)、8(3)和11條的相關條文一併理解。

17. 有鑑於此，相關問題包括：

- (i) 應否將“知識產權”悉數豁除於日後的公約的適用範圍？若然，應否同時豁除“相類似事項”？
- (ii) 由於有關知識產權的裁決在某些司法管轄區是由主管機關而非法院作出的，因此“法院”和“裁決”的涵義應否延伸至分別涵蓋“主管機關”和“由主管機關作出的裁決”？
- (iii) 應否採納《2018年公約草案》第11條的建議，即就侵犯知識產權判定的判決可予承認和／或執行的範圍，僅限於針對在原審國蒙受的損害而判定的金錢補償？
- (iv) 如知識產權事宜納入日後的公約的適用範圍，應否訂立聲明機制，讓成員國選擇退出這些事宜？

(c) *武裝部隊和執法人員的活動*

18. 《2018年公約草案》第2(1)(n)和(o)條建議從日後的公約的適用範圍豁除“武裝部隊的活動，包括武裝部隊人員執行公務時的活動”和“執法活動，包括執法人員執行公務時的活動”。這些事宜應否

豁除於適用範圍？就此，或可考慮應否設立聲明機制讓締約國選擇是否納入或豁除這些事宜。

(d) 反壟斷(競爭)事宜

19. 《2018年公約草案》第2(1)(p)條建議將“反壟斷(競爭)事宜”豁除於適用範圍。然而，這項事宜的相關問題包括：

- (i) 應從日後的公約的適用範圍悉數豁除“反壟斷(競爭)事宜”，或只豁除反壟斷(競爭)事宜的某些方面？如採取後者做法，反壟斷(競爭)事宜的哪些方面應予豁除？
- (ii) 如就反壟斷(競爭)事宜判定的判決是非金錢補償，應否拒絕承認或執行？¹³

承認和執行

20. 《2018年公約草案》第4條列明有關承認和執行外國判決的一般條文。第5條載列承認和執行的依據(又稱“間接司法管轄權”或“司法管轄權篩選條件”)清單，而第7條列明可拒絕承認或執行判決的理由。

(a) 共同法院

¹³ 《2018年公約草案》第11條規定，“[在知識產權事宜上，就侵犯知識產權判定的判決可予[承認和]執行的範圍，僅限於針對在原審國蒙受損害而判定的金錢補償。]”視乎政策是否如是決定，可考慮加入類似條文，以豁除就反壟斷(競爭)事宜判定的判決所涉的非金錢補償。有關建議豁除反壟斷(競爭)事宜的問題，可參閱 Cara North 女士所著題為 *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，可瀏覽：
<https://assets.hcch.net/docs/dcd7c92a-d3fd-46a5-bae5-627ff1636003.pdf>

21. 特別委員會在 2018 年 5 月的會議上，討論“共同法院”(例如歐洲法院)的判決應否視為締約國法院的判決，受日後的公約所涵蓋並可獲被請求國承認和執行。有關建議現已納入《2018 年公約草案》第 4(5)條，以待進一步討論和審議。¹⁴

22. 《2018 年公約草案》第 4(5)條包括兩部分：第一部分關於共同法院的涵義和適用範圍，以及按照日後的公約的條文承認和執行共同法院的判決；第二部分包括加入或退出有關承認和執行共同法院判決安排的聲明機制。就此，相關問題如下：

- (i) 共同法院的判決應否視為締約國法院的判決，並涵蓋於日後的公約內？
- (ii) 應否設立聲明機制，容許成員國加入或退出有關承認和執行共同法院判決的安排？

一般條款

23. 下述一般條款及相關主要議題尤須在外交大會進一步審議。

(a) 就關乎政府的判決作出的聲明

24. 應否容許締約國按照《2018 年公約草案》第 20 條，聲明日後的公約不適用於任何關乎政府的判決？若然，是否有需要限制聲明

¹⁴ 特別委員會指出：

- (i) 共同法院可履行不同的角色(例如原訟、上訴)；
- (ii) 凡國際法院並非行使一國的司法管轄權，而是就國際公法事宜對各國行使司法管轄權(例如國際法院及歐洲人權法院)，則任何有關共同法院的條文均不適用於該等法院；以及
- (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。

的適用範圍？舉例說，現時的建議是有關聲明不可把法律程序一方為國有企業的判決豁除於日後的公約的適用範圍(第 20(2)條)。

(b) 與其他國際文書的關係

25. 《2018 年公約草案》第 24 條所述的“與其他國際文書的關係”，旨在處理日後的公約與在其生效之前或之後簽訂的條約之間的關係。該等待決問題包括：

- (i) 除“條約”外，應否也涵蓋“其他國際文書”(見《2018 年公約草案》第 24(2)及(3)條)？
- (ii) 若某條約(或其他國際文書)在日後的公約生效之前簽訂，以及就該文書簽訂方之間而言，對某締約國生效，則日後的公約應否影響該條約在該締約國的適用範圍(見《2018 年公約草案》第 24(2)條)？
- (iii) 若某條約(或其他國際文書)在日後的公約生效之後簽訂並對某締約國生效，應否影響其對並非該文書簽訂方的締約國第 6 條所載事宜(關乎專屬承認和執行的基礎)的義務(見《2018 年公約草案》第 24(3)條)？
- (iv) 應否容許或要求締約國在聲明中列入其他不受日後的公約影響的國際文書(見《2018 年公約草案》第 24(5)條)？

徵詢意見

26. 律政司現正就《2018 年公約草案》徵詢意見。我們在擬定香港特區在各項議題的立場時，會考慮有關意見，為 2019 年 6 月中召開的外交大會作好準備。

27. 歡迎各界特別就上述主要待決議題發表意見，例如與以下各項有關的建議：

- 豁除“私隱”事宜(見上文第 13 段)
- 豁除“知識產權”事宜(見上文第 14 至 17 段)
- 豁除“武裝部隊和執法人員的活動”(見上文第 18 段)
- 豁除“反壟斷(競爭)”事宜(見上文第 19 段)
- 擴大日後的公約的涵蓋範圍至包括共同法院的判決(見上文第 21 至 22 段)
- 關於“就關乎政府的判決作出的聲明”的條文(見上文第 24 段)
- 關於“與其他國際文書的關係”的條文(見上文第 25 段)

28. 如有意見，請在 2019 年 3 月 31 日前送達香港下亞厘畢道 18 號律政中心中座 7 樓律政司國際法律科(傳真：3918 4791；電郵：ild@doj.gov.hk)。如對本議題有任何查詢，請與律政司國際法律科署理副首席政府律師(條約法律)陳婉冰女士聯絡(電話：3918 4305；電郵：lorrainechan@doj.gov.hk)。

律政司
國際法律科
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.