

**HAGUE CONFERENCE JUDGMENTS PROJECT**  
**Recognition and enforcement of foreign judgments**  
**Public Consultation Paper**  
**March 2018**

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**QUESTIONS 3 AND 7, CONSULTATION PAPER**

**Question 3**

**What are your views on the scope of the draft Convention? Are there any civil or criminal matters that are currently in scope that raise concerns? In particular, do you have any views on those matters in bracketed text, ie, privacy/unauthorised public disclosure of information relating to private life; and/or intellectual property [and analogous matters]?**

**Question 7**

**Should intellectual property matters be included or excluded in the draft Convention (see Article 5(3) and Article 2, respectively)? To what extent should the circulation of intellectual property judgments be treated differently to that of other judgments under the draft Convention?**

**Comments**

1. Questions 3 and 7 in the Consultation Paper could be considered together to the extent they deal with recognition and enforcement of intellectual property judgments, or exclusion of them from the scope of the draft Convention.
2. Example 9 relates to Article 2, sub-paragraph 2(m) which excludes intellectual property [and analogous matters] from the scope of the Convention. It is stated that the inclusion of this subject matter within the scope of the Convention is contentious “due in part to the fact that intellectual property rights are territorial and are often dealt with by the State granting the right”.
3. However, Article 5, paragraph 3, (which is subject to further consideration and negotiation), sets out what foreign intellectual property judgments are eligible for recognition and enforcement in the court of a requested State. As regards a judgment on the validity of an intellectual property, Article 6(a) provides that the judgment “**shall** be recognised and enforced if and only if the State of origin is the State in which grant or registration has taken place.....”. There seems to be a

difference between Article 5, paragraph 3, and Article 6(a), but it is not clear what the difference is. The former seems to deal with the eligibility for a judgment to be recognised and enforced, while the latter seems to explicitly state that only a specified type of judgment shall be recognised and enforced.

4. I suggest that the draft Convention cover the recognition and enforcement of foreign intellectual property judgments subject to further negotiation on matters that are within square brackets in the draft Convention.

## **QUESTION 10, CONSULTATION PAPER**

### **Question 10**

**What are your views on the recognition and enforcement of monetary vs non-monetary judgments for infringement in intellectual property matters? Are there any other issues relating to intellectual property that should be addressed by the draft Convention?**

### **Comments**

5. If non-monetary judgments for infringement in intellectual property matters are to be recognised and enforced, consideration may be given to limiting it only to the extent that a similar judgment would be able to be made in a similar proceeding in the requested State.

## **OTHER MATTERS**

### ***Article 7, paragraph 2***

6. Article 7, paragraph 2 provides that, “[r]ecognition 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”. Could this lead to a situation where there arise judgements of two courts, namely, a court of origin and a court of the requested State, on the same subject matter? If so, should consideration be given to clarifying that Article 7, paragraph 2 is not taken to affect the validity of a judgment in the State of the court? This would ensure that each judgement is valid to the extent that they apply in the country of the

relevant court.

**Paragraph 4.18, Consultation Paper**

6. Paragraph 4.18 of the Consultation Paper is about Article 15 which relates to the costs of proceedings. It is explained that no security, bond or deposit “may be required from the applicant for the sole reason that he or she is a national of another State or his or her habitual residence or domicile is in another State.” It further explains that “[a] security payment is however possible for other reasons including, for example, where the judgment-creditor has no assets in the requested State.” I note that Article 15 does not seem to envisage security payment in the latter circumstances.

**Limitation period**

7. The *Foreign Judgments Act 1991* (s.6(1)) provides for a time limit for applying for the registration of a foreign judgment. Consideration may be given to whether or not the Convention needs to include a limitation period for an application for recognition and enforcement of a foreign judgment. Under Article 14 of the Convention laws of a requested State applies for matters of procedure. As limitation period is procedural, would the law of a requested State apply to it may be considered.