

**CIVIL JURISDICTION AND JUDGMENTS ACT****Principal Act**

<b>Act. No. 1993-29</b>	<i>Commencement (LN. 1998/102)</i>	5.11.1998
	<i>Assent</i>	16.12.1993

Amending enactments	Relevant current provisions	Commencement date
Act. 1997-27	ss.3, 5(6), Sch.1, 2 and 3	5.11.1998
2004-15	ss. 2(1), (3), (6), 3, 16(1)(b) and (c), 17(1)(a) and (b), 17(3)(a) and (b), (3A), 18(2), 21(4)(a), 22(2), 32(1), (2), (3)(a), (b), (e) and (g), 38, Part V and Sch. 10	21.7.2004
2005-07	ss. 2(1), (5), 6, 7, 9(1), (3), (4), (5), 10(1), (2), 32(1), (2), 39(1) Sch. 10 paras 1-6,	17.2.2005
2007-17	ss. 7(1), 13(1), 14(1), 15(3), 17(3), 30(1) & (2)	14.6.2007
2010-05	Sch. 11	18.3.2010
LN. 2015/003	ss. 2(1), (6), 32(2), (3), Sch. 10	10.1.2015
2015/170	ss. 2(1), (3), (4), (6), 4(5), (6), 6A, 8A, 9(1), (5), 11A, 12, 15, 16(1)(d), 17(1)(a), (b), (3)(A)(a), (b), 21(4)(a), 22(2), 32(1), 33, 38B, Sch. 6A	1.10.2015

**English Sources:**

None

**EU Legislation/International Agreements involved:**

Council Regulation (EC) No. 44/2001

Council Regulation (EC) No 2201/2003

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

The Accession Convention

The 1982 Accession Convention  
The 1989 Accession Convention  
The Brussels Conventions  
The Hague Convention  
The Lugano Convention



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AN ACT TO MAKE FURTHER PROVISION ABOUT THE JURISDICTION OF COURTS AND TRIBUNALS IN GIBRALTAR AND ABOUT THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS GIVEN IN GIBRALTAR OR ELSEWHERE AND TO PROVIDE FOR THE MODIFICATION OF ASSOCIATED LEGISLATION.

**Title and commencement.**

1.(1) This Act may be cited as the Civil Jurisdiction and Judgments Act 1993 and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes.

(2) Notices made under sub-section (1) may make such transitional provisions as the Governor shall, in respect of the implementation of any section, determine.

**Interpretation.**

2.(1) In this Act—

“the 1968 Convention” means the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (including the Protocol annexed to that Convention) signed at Brussels on 27th September 1968;

“the 1971 Protocol” means the Protocol on the interpretation of the 1968 Convention by the European Court signed, at Luxembourg on the 3rd June 1971;

“The Accession Convention” means the Convention on the accession to the 1968 Convention and the 1971 Protocol of Denmark, the Republic of Ireland and the United Kingdom signed at Luxembourg on the 9th October 1978;

“the 1982 Accession Convention” means the Convention on the accession of the Hellenic Republic to the 1968 Convention and the 1971 Protocol, with the adjustments made to them by the Accession Convention, signed at Luxembourg on the 25th October 1982;

“the 1989 Accession Convention” means the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the 1968 Convention and the 1971 Protocol with the adjustments made to them by the Accession Convention and the 1982 Accession Convention, signed at Donostia San Sebastian on 26th May 1989;



“the Brussels Conventions” means the 1968 Convention, as amended or supplemented by the 1971 Protocol, the Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention;

“the 2005 Hague Convention” means the Convention on Choice of Court Agreements concluded on 30 June 2005 at the Hague;

“the Lugano Convention” means the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (including the Protocols annexed to that Convention) open for signature at Lugano on the 16th September 1988 and signed by the United Kingdom on the 18th September 1989;

“the Regulation” means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) as amended from time to time and as applied by virtue of the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“Regulation 2201/2003” means Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

- (2) In this Act unless the context otherwise requires—
- (a) references to or to any provision of, the 1968 Convention or the 1971 Protocol are references to that Convention, Protocol or provision as amended by the Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention; and
  - (b) any reference in any provision to a numbered Article without more, is a reference—
    - (i) to the Article so numbered of the 1968 Convention in so far as the provision applies in relation to that Convention;
    - (ii) to the Article so numbered in the Lugano Convention in so far as the provision applies in relation to that Convention,

and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) In this Act—

“Contracting State,” without more, in any provision means—

- (a) in the application to the provision in relation to the Brussels Conventions, a Brussels Contracting State;
- (b) in the application of the provision in relation to the Lugano Convention, a Lugano Contracting State; and
- (c) in the application of the provision in relation to the 2005 Hague Convention, a 2005 Hague Convention State,

and shall be taken to include any territory of such a state to which in accordance with the provisions of the relevant Convention, the Contracting State has by declaration extended the application of the Convention;

“Brussels Contracting State” means Denmark (which is not bound by the Regulation, but was one of the parties acceding to the 1968 Convention under the Accession Convention);

“2005 Hague Convention State”, in any provision, in the application of that provision in relation to the 2005 Hague Convention, means a State bound by that Convention and for these purposes, Gibraltar shall be deemed a Convention State;

“Lugano Contracting State” means one of the original parties to the Lugano Convention that is to say, Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom being a state in relation to which the Convention has taken effect in accordance with that paragraph 3 or 4 of Article 61 and shall be taken to include any territory of such a state to which, in accordance with the provisions of the Lugano Convention, the Contracting State has by declaration extended the application of the Convention.

“Regulation State” means all member States except Denmark and the United Kingdom.

(4) In this Act “judgment” means any judgement or order (by whatever name called) given or made by a court in any civil proceedings:

Provided that in Part I—

- (a) “judgment” has the meaning given by Article 25 of the 1968 Convention or Article 4(1) of the 2005 Hague Convention; and
- (b) references to a judgment registered under section 6, 6A or 7 include, to the extent of its registration, references to a judgment so registered to a limited extent only.

(5) In this Act, unless the context otherwise requires—

“association” means an unincorporated body of persons;

“corporation” means a body corporate;

“court”, without more, includes a tribunal;

“court of law” in relation to Gibraltar means any of the following courts—

- (a) the Judicial Committee of the Privy Council, as provided for in the Gibraltar (Appeals to Privy Council) Order, 1985;
- (b) the Court of Appeal;
- (c) the Supreme Court;
- (d) the Court of First Instance; and
- (e) the Magistrate’s Court;

“declared enforceable” means that a court has made an enforcement order;

“enactment” includes an enactment comprised in the legislation of England and Wales only in so far as that enactment has been applied in Gibraltar;

“enforcement order” means an order that a judgment (including a maintenance order) may be enforced in Gibraltar;

“maintenance order” means a maintenance judgment within the meaning of the 1968 Convention or, as the case may be, the Lugano Convention;

“modifications” includes additions, omissions and alterations;

“overseas country” means any country or territory outside Gibraltar and shall be taken to include any part of the United Kingdom (being England and Wales, Scotland or Northern Ireland);

“payer”, in relation to a maintenance order, means the person liable to make the payment for which the order provides;

“prescribed” means prescribed by rules of court;

“rules of court”, in relation to any court means rules, orders or regulations made by the authority having power to make rules, orders or regulations regulating the procedure of that court;

“statutory provisions” means any provision contained in any Act or in subordinate legislation or any instrument of a legislative character; and

“tribunal” means a tribunal of any description other than a court of law and in relation to an overseas country includes, (as regards matters relating to maintenance within the meaning of the 1968 Convention), any authority having power to give, enforce, vary or revoke a maintenance order.

(6) Any question arising as to whether it is the Regulation, any of the Brussels Conventions, the Lugano Convention or the 2005 Hague Convention which applies in the circumstances of a particular case shall be determined as follows—

- (a) in accordance with Article 54B of the Lugano Convention (which determines the relationship between the Brussels Conventions and the Lugano Convention);
- (b) in accordance with Article 68 of the Regulation (which determines the relationship between the Brussels Conventions and the Regulation);
- (c) in accordance with Article 73(1) of the Regulation (which determines the relationship between the Lugano Convention and the Regulation);
- (d) in accordance with Article 26 of the 2005 Hague Convention (which determines the relationship between the Brussels Conventions, the Lugano Convention, the Regulation and the 2005 Hague Convention).

#### **PART I.**

## IMPLEMENTATION OF THE CONVENTIONS.

### 3. *Repealed.*

#### **Conventions to have the force of law.**

4. (1) The Brussels Conventions shall have the force of law in Gibraltar and judicial notice shall be taken of them.

(2) For convenience of reference there are set out in Schedules 1, 2, 3, 4 and 5 respectively the English text of—

- (a) the 1968 Convention as amended by Titles II and III of the Accession Convention, by Titles II and III of the 1982 Accession Convention and by Titles II and III of, and Annex 1 (d) to, the 1989 Accession Convention;
- (b) the 1971 Protocol as amended by Title IV of the Accession Convention, by Title IV of the 1982 Accession Convention and by Title IV of the 1989 Accession Convention;
- (c) Titles V and VI of the Accession Convention (transitional and final provisions) as amended by Title V of the 1989 Accession Convention;
- (d) Titles V and VI of the 1982 Accession Convention (transitional and final provisions); and
- (e) Title VI and VII of the 1989 Accession Convention (transitional and final provisions),

being texts prepared from the authentic English texts referred to in Articles 37 and 41 of the Accession Convention, in Article 17 of the 1982 Accession Convention and in Article 34 of the 1989 Accession Convention.

(3) The Lugano Convention shall have the force of law in Gibraltar and judicial notice shall be taken of it.

(4) For convenience of reference there is set out in Schedule 6 of the English text of the Lugano Convention.

(5) The 2005 Hague Convention shall have the force of law in Gibraltar and judicial notice shall be taken of it.

(6) For convenience of reference there is set out in Schedule 6A the English text of the 2005 Hague Convention.

**Interpretation of the Conventions.**

5. (1) Any question as to the meaning or effect of any provision of the Brussels Conventions shall, if not referred to the European Court in accordance with the 1971 Protocol, be determined in accordance with the principles laid down by and in any relevant decision of the European Court.

(2) Judicial notice shall be taken of any decision of, or expression of opinion by, the European Court on any such question.

(3) Without prejudice to the generality of sub-section (1) the following reports (which are reproduced in the Official Journal of the Communities), namely—

- (a) the reports by Mr. P. Jenard on the 1968 Convention and the 1971 Protocol; and
- (b) the report by Professor Peter Schlosser on the Accession Convention; and
- (c) the report by Professor Demetrios Evirigenis and Professor K. D. Kerameus on the 1982 Accession Convention; and
- (d) the report by Mr. Martinho de Almeida Cruz, Mr. Manuel Desantes Real and Mr. P. Jenard on the 1989 Accession Convention;

may be considered in ascertaining the meaning or effect of any provision of the Brussels Conventions and shall be given such weight as is appropriate in the circumstances.

(4) In determining any question as to the meaning or effect of a provision of the Lugano Convention, a court in Gibraltar shall, in accordance with Protocol No. 2 to that Convention, take account of any principles laid down in any relevant decision delivered by a court of any Lugano Contracting State concerning provisions of the Convention.

(5) Without prejudice to the practice of the courts as to the matters which may be considered apart from this sub-section, the report on the Lugano Convention by Mr. P. Jenard and Mr. G. Moller (which is reproduced in the Official Journal of Communities of the 28th July 1990) may be considered in ascertaining the meaning or effect of any provision of the Convention and shall be given such weight as is appropriate in the circumstances.

(6) Nothing in this section shall prejudice the provisions of section 3(2) above.

## **Enforcement of judgments other than maintenance orders.**

6.(1) The court to which an application is made under Article 32 shall be the Supreme Court and the Supreme Court may, on an application made under Article 31, make an enforcement order.

(2) Where an enforcement order is made under this section, the reasonable costs or expenses of and incidental to the order shall be recoverable as if they were sums recoverable under the judgment which has been declared enforceable.

- (3) Where a judgment has been declared enforceable under this section—
- (a) it shall be of the same force and effect, as if it had been originally made by the Supreme Court; and
  - (b) may be enforced in the same way as if it had been originally made by the Supreme Court.
- (4) Sub-section (3) is subject to—
- (a) article 39 (restriction on enforcement where appeal pending or time for appeal unexpired);
  - (b) section 9; and
  - (c) any provision made by rules of court as to the manner in which and conditions subject to which a judgment declared enforceable under this section may be enforced.

## **Registration and enforcement of judgments under the 2005 Hague Convention.**

6A.(1) A judgment which is required to be recognised and enforced under the 2005 Hague Convention in Gibraltar shall be registered in the prescribed manner in the Supreme Court, on the application of any interested party.

(2) A judgment which is required to be recognised and enforced under the 2005 Hague Convention shall be registered without delay on completion of the formalities in Article 13 of the 2005 Hague Convention if the court considers that it meets the condition for recognition in Article 8(3) of the 2005 Hague Convention, without any review of whether a ground for refusal under Article 9 applies.

(3) The party against whom enforcement is sought shall not be entitled to make any submission on the application for registration.

(4) Where a judgment which is required to be recognised and enforced under the 2005 Hague Convention has been registered, the reasonable costs or expenses of and incidental to its registration shall be recoverable as if they were sums recoverable under the judgment.

(5) A judgment which is required to be recognised and enforced under the 2005 Hague Convention shall, for the purposes of its enforcement, be of the same force and effect, the registering court shall have in relation to its enforcement the same powers, and proceedings for or with respect to its enforcement may be taken, as if the judgment had been originally given by the registering court and had (where relevant) been entered.

(6) Subsection (5) is subject to section 9 (interest on registered judgments) and to any provision made by rules of court as to the manner in which and conditions subject to which a judgment registered under the 2005 Hague Convention may be enforced.

#### **Recognition and enforcement of maintenance orders.**

7.(1) The function of transmitting an application under Article 31 for the recognition or enforcement in Gibraltar of a maintenance order to the appropriate court shall be discharged in Gibraltar by the Minister responsible for justice and in this sub-section “the appropriate court” means the Magistrates’ Court.

(2) Such an application shall be determined by the Magistrates’ Court. The Magistrates’ Court may make an enforcement order in respect of a maintenance order.

(3) Where a maintenance order has been declared enforceable under this section—

- (a) it shall be of the same force and effect as if it had originally been made by the Magistrates’ Court; and
- (b) may be enforced in the same way as if the order had been originally made by the Magistrates’ Court.

(4) Sub-section (3) is subject to—

- (a) Article 39 (restriction and enforcement where appeal pending or time for appeal unexpired);
- (b) section 9; and



- (c) to any provision made by rules of court as to the manner in which, and the conditions subject to which, an order declared enforceable under this section may be enforced.

(5) The payer under a maintenance order declared enforceable under this section shall give notice of any change of address to the clerk of the Magistrates' Court.

(6) A person who, without reasonable excuse, fails to comply with subsection (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Appeals under Article 37, second paragraph and Article 4.**

8.(1) The single further appeal on a point of law referred to in the 1968 Convention and the Lugano Convention in Article 37, second paragraph and Article 41 in relation to the recognition or enforcement of a judgment other than a maintenance order lies to the Court of Appeal in accordance with the Court of Appeal Act<sup>1</sup>.

(2) The single further review on a point of law referred to in each of those Conventions in Article 37, second paragraph and Article 41 in relation to the recognition or enforcement of a maintenance order lies to the Supreme Court by way of case stated in accordance with section 62 of the Magistrate's Court Act<sup>2</sup>.

### **Appeals in relation to registration of judgments under the 2005 Hague Convention.**

8A. (1) A decision on the application for registration of a judgment required to be recognised and enforced under the 2005 Hague Convention may be appealed against by either party.

(2) The appeal referred to in subsection (1) lies to the Court of Appeal in accordance with the Court of Appeal Act.

- (3) The Court of Appeal shall refuse or revoke registration only if
  - (a) the condition for recognition in Article 8(3) of the 2005 Hague Convention is not met;
  - (b) the ground for postponement or refusal of recognition in Article 8(4) of the 2005 Hague Convention applies; or

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<sup>1</sup> 1969-28

<sup>2</sup> 1961-23

one or more of the grounds specified in Article 9 of the 2005 Hague Convention apply.

**Interest on registered judgments.**

9.(1) Subject to sub-section (4), where in connection with an application for an enforcement order in respect of a judgment (including a maintenance order) under sections 6, 6A or 7 the applicant shows—

- (a) that the judgment provides for the payment of a sum of money; and
- (b) in accordance with the law of the Contracting State in which the judgment was given interest on that sum is recoverable under the judgment from a particular date or time,

the rate of interest and the date or time from which it is so recoverable shall be declared enforceable with the judgment and, subject to any provision made under sub-section (2), the debt resulting, apart from Section 6 (2), from the enforcement order in respect of the judgment shall carry interest in accordance with that enforcement order.

(2) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of sub-section (1) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.

(3) Costs or expenses recoverable by virtue of section 6 (2) shall carry interest as if they were the subject of an order for the payment of costs or expenses made by the court making the enforcement order on the date of that order.

(4) Interest on arrears of sums payable under a maintenance order declared enforceable under section 7 in the magistrate's court shall be recoverable in that court as a civil debt, notwithstanding the provisions of section 40(2)(a) of the Magistrates Court Act<sup>2</sup>.

(5) Debts under judgments declared enforceable under sections 6, 6A or 7 shall carry interest only as provided for by this section.

**Currency of payments under registered maintenance orders.**

10. (1) Sums payable in Gibraltar under a maintenance order by virtue of an enforcement order made under section 7, including any arrears so payable, shall be paid in the currency of Gibraltar.

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<sup>2</sup> 1961-23

(2) Where the order is expressed in any other currency, the amounts shall be converted on the basis of the exchange rate prevailing on the date the order was declared enforceable.

(3) For the purposes of this section, a written certificate purporting to be signed by an officer of any bank in Gibraltar and stating the exchange rate prevailing on a specified date shall be evidence of the facts stated.

## **Proof and admissibility of judgments and related documents.**

11.(1) For the purposes of the 1968 Convention or the Lugano Convention—

- (a) a document duly authenticated which purports to be a copy of a judgment given by a court of a Contracting State other than Gibraltar shall, without further proof, be deemed to be a true copy, unless the contrary is shown; and
- (b) the original or a copy of any such document as is mentioned in Article 46(2) or 47 (supporting documents to be produced by a party seeking recognition or enforcement of a judgment) shall be evidence of any matter to which it relates.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in sub-section (1) (a) is duly authenticated for the purposes of this section if it purports—

- (a) to bear the seal of that court; or
- (b) to be certified by any person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court.

(3) Nothing in this section shall prejudice the submission in evidence of any document which is admissible apart from this section.

## **Proof and admissibility of certain judgments and related documents for the purposes of the 2005 Hague Convention.**

11A. (1) For the purposes of the 2005 Hague Convention—

- (a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a 2005 Hague Convention State other than Gibraltar shall without further proof be deemed to be a true copy, unless the contrary is shown; and

- (b) a certificate issued by the court of the 2005 Hague Convention State of origin, in the form recommended for use under the 2005 Hague Convention and published by the Hague Conference on Private International Law, as referred to in Article 13(3) of the 2005 Hague Convention, shall be evidence as to whether the judgment has effect or is enforceable in the 2005 Hague Convention State of origin.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in subsection (1)(a) is duly authenticated for the purposes of this section if it purports-

- (a) to bear the seal of that court; or
- (b) to be certified by any person in their capacity as judge or officer of that court to be a true copy of a judgment given by that court.

(3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible apart from this section.

#### **Copies of, and certificates in connection with Gibraltar judgments.**

12. Rules of court may make provision for enabling any interested party wishing to secure under the 1968 Convention, the Lugano Convention or the 2005 Hague Convention the recognition and enforcement in another Contracting State of a judgment given by a court in Gibraltar to obtain, subject to any conditions specified in the rules,–

- (a) a copy of the judgment; and
- (b) a certificate giving particulars relating to the judgment and the proceedings in which it was given.

#### **Modifications to cover authentic instruments and court settlements.**

13.(1) The Minister responsible for justice may, by notice in the Gazette, provide that–

- (a) any provision of this Act relating to the recognition or enforcement in Gibraltar of judgments to which the 1968 Convention or the Lugano Convention applies; and
- (b) any other statutory provision, whenever passed or made, so relating,

shall apply, with such modifications as may be specified in the notice, in relation to documents and settlements within Title IV of the 1968

Convention or, as the case may be, Title IV of the Lugano Convention (authentic instruments and court settlements enforceable in the same manner as judgments), as if they were judgments to which the Convention in question applies.

(2) A notice under this section may make different provision in relation to different descriptions of documents and settlements.

## **Modifications consequential on revision of the Conventions.**

14. (1) If at any time it appears to the Minister responsible for justice that Her Majesty's Government in the United Kingdom have agreed to a revision of the Lugano Convention or any of the Brussels Conventions including in particular any revision connected with the accession to the Lugano Convention or the 1968 Convention of one or more further states, the Minister responsible for justice may, by notice in the Gazette, make such modifications of this Act or any other statutory provision, whenever passed or made, as the Minister responsible for justice considers appropriate in consequence of the revision.

(2) In this section "revision" means an omission from, addition to or alteration of the Lugano Convention or any of the Brussels Conventions to any extent by another Convention, Protocol or other description of international agreement.

## **Provisions supplementary to Title VII of the 1968 Convention.**

15. (1) The provisions of Title VII of the 1968 Convention and, apart from Article 54B of Title VII of the Lugano Convention (relationship between the Convention in question and other conventions to which the Contracting States are or may become parties) and Article 26 of the 2005 Hague Convention shall have effect in relation to—

- (a) any statutory provision extending any such other convention to Gibraltar;
- (b) any rule of law so far as it has the effect of so implementing any such other convention,

as they have effect in relation to that other convention itself.

(2) Any question arising as to whether it is the Lugano Convention or any of the Brussels Conventions which applies in the circumstances of a particular case falls to be determined in accordance with the provisions of Article 54B of the Lugano Convention.

(3) The Minister responsible for justice may, by notice in the Gazette, declare a provision of a convention extended to Gibraltar to be a provision whereby Gibraltar assumed an obligation of a kind provided for in Article 59 (which allows the Contracting State to agree with a third state to withhold recognition in certain cases from a judgment given by a court in another Contracting State which took jurisdiction on one of the grounds mentioned in the second paragraph of Article 3).

## **PART II.**

### **PROVISIONS RELATING TO JURISDICTION.**

#### **Interim relief and protective measures in case of doubtful jurisdiction.**

16.(1) Any power of a court in Gibraltar to grant interim relief pending trial or pending the determination of an appeal shall extend to a case where—

- (a) the issue to be tried, or which is the subject of the appeal, relates to the jurisdiction of the court to entertain the proceedings; or
- (b) the proceedings involve the reference of any matter to the European Court under the 1971 Protocol; or
- (c) the proceedings involve a reference of any matter relating to the Regulation to the European Court under Article 68 of the Treaty establishing the European Community;
- (d) This subsection shall also apply to the 2005 Hague Convention.

(2) Sub-section (1) shall not be construed as restricting any power to grant interim relief or protective measures which a court may have apart from this section.

#### **Interim relief in the absence of substantive proceedings.**

17. (1) The Supreme Court shall have power to grant interim relief where—

- (a) proceedings have been or are to be commenced in a Brussels or Lugano Contracting State or a 2005 Hague Convention State or a Regulation State other than Gibraltar; and
- (b) they are or will be proceedings whose subject-matter is either within the scope of the Regulation, as determined by Article 1 of the Regulation, within scope of the Lugano Convention as determined by Article 1 of the Lugano Convention or within scope of the 2005 Hague Convention as determined by Articles 1 and 2 of the 2005 Hague Convention (whether or not the

Regulation, the Lugano Convention or the 2005 Hague Convention has effect in relation to the proceedings).

(2) On any application for interim relief under sub-section (1) , the court may refuse to grant relief if, in the opinion of the court, the fact that the court has no jurisdiction apart from this section in relation to the subject matter of the proceedings in question, makes it inexpedient for the court to grant it.

(3) The Minister responsible for justice may, by notice in the Gazette, extend the power to grant interim relief conferred by sub-section (1) so as to make it exercisable in relation to proceedings of any of the following descriptions, namely–

- (a) *Repealed.*
- (b) *Repealed.*
- (c) arbitration proceedings.

(3A) The Supreme Court shall have power to grant interim relief under section 17(1) in relation to proceedings of the following descriptions, namely–

- (a) proceedings commenced or to be commenced otherwise than in a Brussels or Lugano Contracting State or a 2005 Hague Convention State or Regulation State;
- (b) proceedings whose subject-matter is not within the scope of Article 1 of the Regulation, Article 1 of the 1968 Convention, Article 1 of the Lugano Convention or the 2005 Hague Convention as determined by Articles 1 and 2 of the 2005 Hague Convention respectively.

(4) A notice under sub-section (3)–

- (a) may confer power to grant only specified descriptions of interim relief;
- (b) may make different provision for different classes of proceedings, for proceedings pending in different countries or courts outside Gibraltar and for other different circumstances; and
- (c) may impose conditions or restrictions on the exercise of any power conferred by the notice.

(5) A notice under sub-section (3) which confers power to grant interim relief in relation to arbitration proceedings may provide for the repeal of any provision of section 32 of the Arbitration Act<sup>3</sup> to the extent that it is superseded by the provisions of the notice.

(6) In this section “interim relief” in relation to the Supreme Court means interim relief of any kind which that court has power to grant in proceedings relating to matters within its jurisdiction other than—

- (a) a warrant for the arrest of property; or
- (b) provision for obtaining evidence.

**Proceedings in Gibraltar for torts to immovable property.**

18. (1) The jurisdiction of any court in Gibraltar to entertain proceedings for trespass to, or any other tort affecting, immovable property shall extend to cases in which the property in question is situated outside Gibraltar unless the proceedings are principally concerned with the question of the title to, or the right to possession of, that property.

(2) Sub-section (1) has effect subject to the 1968 Convention the Lugano Convention and the Regulation.

**Security in Admiralty proceedings in Gibraltar.**

19. (1) Where in Gibraltar a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of an overseas country, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest—

- (a) order that the property arrested be retained as security for the satisfaction of any award or judgment which—
  - (i) is given in respect of the dispute in the arbitration or legal proceedings in favour of which those proceedings are stayed or dismissed; and
  - (ii) is enforceable in Gibraltar; or
- (b) order that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award or judgment.

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<sup>3</sup> 1895-10



(2) Where a court makes an order under sub-section (1), it may attach such conditions to the order as it thinks fit, in particular, conditions with respect to the institution or prosecution of the relevant arbitration or legal proceedings.

(3) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice shall apply in relation to property retained in pursuance of an order made by a court under sub-section (1) as would apply if it were held for the purposes of proceedings in that court.

### **PART III.** PROVISIONS RELATING TO RECOGNITION AND ENFORCEMENT OF JUDGMENTS.

#### **Overseas judgments given against states, etc.**

20. (1) A judgment given by a court of an overseas country against a state other than Gibraltar or the state to which that court belongs, shall be recognised and enforced in Gibraltar only if—

- (a) it would be so recognised and enforced if it had not been given against the state; and
- (b) that court would have had jurisdiction in the matter if it had applied rules corresponding to those applicable and to such matters in Gibraltar in accordance with sections 2 to 11 of the State Immunity Act 1978 or an order made under section 13 of the Supreme Court Act<sup>4</sup> having similar effect.

(2) References in sub-section (1) to a judgment given against a state include references to judgments of any of the following descriptions given in relation to a state—

- (a) judgments against the government, or a department of the government, of the state but not (except as mentioned in paragraph (c)) judgments against an entity which is distinct from the executive organs of government;
- (b) judgment against the sovereign or head of state in his public capacity;
- (c) judgments against any such separate entity as is mentioned in paragraph (a) and given in proceedings relating to anything done by it in the exercise of the sovereign authority of the state.

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<sup>4</sup> 1960-02

(3) Nothing in sub-section (1) shall affect the recognition or enforcement in Gibraltar of a judgment to which Part I of the Judgments (Reciprocal Enforcement) Act applies by virtue of—

- (a) section 17(4) of the Nuclear Installations Act 1965 as extended by the Nuclear Installations (Gibraltar) Orders 1970 and 1985;
- (b) the Admiralty Jurisdiction (Gibraltar) Order, 1987;
- (c) section 4 of the Carriage of Goods by Road Act 1965 as extended by the Carriage of Goods by Road (Gibraltar) Order, 1967, as amended by the 1981 Order.

(4) Sections 12, 13 and 14 (3) and (4) of the State Immunity Act 1978 (service of process and procedure or privileges) shall apply to proceedings for a recognition or enforcement in Gibraltar of a judgment given by a court of an overseas country (whether or not that judgment is within sub-section (1)) as they apply to other proceedings.

(5) In this section—

“state”, in the case of a federal state, includes any of its constituent territories;

“State Immunity Act 1978” means that Act as extended to Gibraltar.

**Overseas judgments given in proceedings brought in breach of agreement for settlement of disputes.**

21. (1) Subject to the following provisions of this section, a judgment given by a court of an overseas country in any proceedings shall not be recognised and enforced in Gibraltar if—

- (a) the bringing of those proceedings in the court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the court of that country; and
- (b) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; and
- (c) the person did not counterclaim in the proceedings or otherwise submit to the jurisdiction of that court.

(2) Sub-section (1) does not apply where the agreement referred to in paragraph (a) of that sub-section was illegal, void or unenforceable or was incapable of being performed for reasons not attributable to the fault of the party bringing the proceedings in which the judgment was given.

(3) In determining whether a judgment given by a court of an overseas country should be recognised or enforced in Gibraltar, a court in Gibraltar shall not be bound by any decision of the overseas court relating to any of the matters mentioned in sub-section (1) or (2).

(4) Nothing in sub-section (1) shall affect the recognition or enforcement in Gibraltar of—

- (a) a judgment which is required to be recognised or enforced there under the 2005 Hague Convention, the 1968 Convention or the Lugano Convention or the Regulation;
- (b) a judgment to which Part I of the Judgments (Reciprocal Enforcement) Act<sup>6</sup> applies by virtue of—
  - (i) section 17 (4) of the Nuclear Installations Act 1965 as extended by the Nuclear Installations (Gibraltar) Orders 1970 and 1985;
  - (ii) the Admiralty Jurisdiction (Gibraltar) Order 1987;
  - (iii) section 4 of the Carriage of Goods by Road Act 1965 as extended by the Carriage of Goods by Road (Gibraltar) Order 1967, as amended by the 1981 Order.

**Certain steps not to amount to submission to a jurisdiction of overseas court.**

22. (1) For the purposes of determining whether a judgment given by a court of an overseas country should be recognised or enforced in Gibraltar, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the Court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—

- (a) to contest the jurisdiction of the court;
- (b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to

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<sup>6</sup> 1935-04

arbitration or to the determination of the courts of another country;

- (c) to protect, or obtain the release of, the property seized or threatened with seizure in the proceedings.

(2) Nothing in this section shall affect the recognition or enforcement in Gibraltar of a judgment which is required to be recognised or enforced there under the 1968 Convention or the Lugano Convention or the Regulation or the 2005 Hague Convention.

**Certain judgments a bar to further proceedings in the same cause of action.**

23. No proceedings may be brought by a person in Gibraltar on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court in Gibraltar or in a court of an overseas country unless that judgment is not enforceable or entitled to recognition in Gibraltar.

**PART IV.**

**SUPPLEMENTARY AND GENERAL PROVISIONS.**

**Domicile of individuals.**

24. (1) Subject to Article 52 (which contains provisions for determining whether a party is domiciled in a Contracting State), the following provisions of this section determine for the purposes of the 1968 Convention, the Lugano Convention and this Act whether an individual is domiciled in Gibraltar or in a state other than a Contracting State.

(2) An individual is domiciled in Gibraltar if and only if—

- (a) he is resident in Gibraltar; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with Gibraltar.

(3) An individual is domiciled in a state other than a Contracting State if and only if—

- (a) he is resident in that state; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with that state.

## **Domicile and seat of a corporation or association.**

25. (1) For the purposes of this Act the seat of a corporation or association (as determined by this section ) shall be treated as its domicile.

(2) The following provisions of this section determine where a corporation or association has its seat for the purposes of Article 53 (which for the purposes of the 1968 Convention or the Lugano Convention, as the case may be, equates domicile of such a body with its seat) and, subject to section 26, for the purposes of this Act.

(3) A corporation or association has its seat in Gibraltar if and only if–

(a) it was incorporated or formed under the law of Gibraltar and has its registered office or some other official address in Gibraltar; or

(b) its central management and control is exercised in Gibraltar.

(4) Subject to sub-Section (5) a corporation or association has its seat in a state other than Gibraltar, if and only if–

(a) it was incorporated or formed under the law of that state and has its registered office or some other official address there; or

(b) its central management and control is exercised in that state.

(5) A corporation or association shall not be regarded as having its seat in a Contracting State other than Gibraltar if it is shown that the courts of that state not regard it as having its seat there.

(6) In this section “official address” in relation to a corporation or association means an address which it is required by law to register, notify or maintain for the purpose of receiving notices or other communications.

## **Seat of a corporation or association for purposes of Article 16(2) and related provisions.**

26. (1) The following provisions of this section determine where a corporation or association has its seat for the purposes of Article 16(2) of the 1968 Convention or the Lugano Convention (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs).

(2) A corporation or association has its seat in Gibraltar if and only if–

(a) it was incorporated or formed under the law of Gibraltar; or

(b) its central management and control is exercised in Gibraltar.

(3) Subject to sub-section (4), a corporation or association has its seat in a Contracting State other than Gibraltar if and only if—

(a) it was incorporated under the law of that state; or

(b) its central management and control is exercised in that state.

(4) A corporation or association shall not be regarded as having its seat in a Contracting State other than Gibraltar if—

(a) it has its seat in Gibraltar by virtue of sub-section (2) (a); or

(b) it is shown that the courts of that other state would not regard it for the purposes of Article 16(2) as having its seat there.

(5) In this section “official address” has the same meaning as in section 25(6).

**Persons deemed to be domiciled in Gibraltar for certain purposes.**

27. (1) This section applies to—

(a) proceedings within Section 3 of Title II of the 1968 Convention or Section 3 of Title II of the Lugano Convention (insurance contracts), and

(b) proceedings within Section 4 of Title II of either of those Conventions.

(2) A person who, for the purposes of proceedings to which this section applies arising out of the operations of a branch, agency or other establishment in Gibraltar, is deemed for the purposes of the 1968 Convention or, as the case may be, of the Lugano Convention to be domiciled in Gibraltar by virtue of—

(a) Article 8, second paragraph (insurers); or

(b) Article 13, second paragraph (suppliers of goods, services or credit to consumers),

shall, for the purposes of those proceedings, be treated for the purposes of this Act as so domiciled.

**Domicile of Trusts.**

28. (1) The following provisions of this section determine, for the purposes of the 1968 Convention, the Lugano Convention and this Act, where a trust is domiciled.

(2) A trust is domiciled in Gibraltar if and only if the system of law of Gibraltar is the system of law with which the trust has its closest and most real connection.

### **Domicile and seat of the Crown.**

29. (1) For the purposes of this Act the seat of the Crown (as determined by this section) shall be treated as its domicile.

(2) The following provisions of this section determine where the Crown has its seat.

(3) The Crown in right of Her Majesty's Government in Gibraltar has its seat in Gibraltar.

### **Modifications occasioned by decisions of European Court as to meaning or effect of Conventions.**

30.(1) The Minister responsible for justice may, by notice in the Gazette, make such provision as he considers appropriate for the purposes of bringing the law in Gibraltar into accord with the Brussels Conventions as affected by any principle laid down by the European Court in connection with the Brussels Conventions or by any decision of that court as to the meaning or effect or any provisions of the Brussels Conventions.

(2) The provision which may be made by virtue of sub-section (1) includes such modifications of this Act or any other statutory provision, whenever passed or made, as the Minister responsible for justice considers appropriate for the purpose mentioned in that sub-section.

### **Availability of legal assistance.**

31. The provisions of the Legal Aid and Assistance Act<sup>5</sup> shall apply to applications and proceedings under this Act.

### **Matters for which rules of court may provide.**

32. (1) Rules of court may make provision for regulating the procedure to be followed in any court in connection with any provision of this Act, the

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<sup>5</sup> 1960-23

Lugano Convention, the Brussels Conventions, the Regulation, Regulation 2201/2003 or the 2005 Hague Convention.

(2) Rules of court may make provision as to the manner in which the conditions subject to which a certificate or judgment enforceable by any court under any provision of this Act or the Regulation may be enforced including provision for enabling the court, subject to any conditions specified in the rules, to give directions about such matters.

(3) Without prejudice to the generality of sub-sections (1) and (2), the power to make rules of court for the magistrate's court shall include power to make such provision as the rule-making authority considers necessary or expedient for the purposes of the provisions of the Lugano Convention or the Brussels Conventions and this Act relating to maintenance proceedings and the recognition and enforcement of maintenance orders, and shall in particular include power to make provision for any of the following matters—

- (a) authorising the service in another Contracting State of process issued by or for the purposes of the magistrates' court and the service and execution in Gibraltar of process issued in another Contracting State;
- (b) requesting courts in other Contracting States to take evidence there for the purposes of proceedings in Gibraltar;
- (c) the taking of evidence in Gibraltar in response to similar request received from such courts;
- (d) the circumstances in which and the conditions subject to which any powers conferred under paragraphs (a) to (c) are to be exercised;
- (e) the admission in evidence, subject to such conditions as may be prescribed in the rules, of statements contained in documents purporting to be made or authenticated by a court in another Contracting State, or by a judge or official of such a court, which purports—
  - (i) to set out or summarise evidence given in proceedings in that court or to be documents received in evidence in such proceedings or copies of such documents, or
  - (ii) to set out or summarise evidence taken for the purposes of proceedings in Gibraltar whether or not in response to any such request as is mentioned in paragraph (b), or



- (iii) to record information relating to the payments made under an order of that court;
- (f) the circumstances and manner in which the magistrates' court may or must vary or revoke a maintenance order registered in that court, cancel the registration of, or refrain from enforcing, such an order;
- (g) the cases and manner in which courts in other Contracting States are to be informed of orders made, or other things done, by or for the purposes of the magistrate's court;
- (h) the circumstances and manner in which the magistrates' court may communicate for other purposes with such courts;
- (i) the giving of notice of such matters as may be prescribed in the rules to such persons as may be so prescribed and the manner in which such notice is to be given.

(4) Nothing in this section shall be taken as derogating from the generality of any power to make rules of court conferred by any other enactment.

(5) Section 15 of the Supreme Court Act<sup>4</sup> shall apply to the exercise by the Supreme Court of the jurisdiction of that court under this Act.

(6) Section 33 of the Magistrates' Court Act<sup>2</sup> shall apply as if the reference in that section to section 24 of that Act were a reference to the provisions of this Act which give jurisdiction to the magistrate's court.

### **Saving of power to stay, strike out or dismiss proceedings.**

33. Nothing in this Act shall prevent any court in Gibraltar from staying, striking out or dismissing any proceedings before it on the ground of forum non-conveniens or otherwise, where to do so is not inconsistent with the 1968 Convention or, as the case may be, the Lugano Convention or the 2005 Hague Convention.

### **Application to Crown.**

34. (1) This Act binds the Crown .

(2) In this section and elsewhere in this Act any reference to the Crown does not include references to Her Majesty in Her Private Capacity.

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<sup>4</sup> 1960-02

<sup>2</sup> 1961-23

**Amendments to the Maintenance Orders (Reciprocal Enforcement) Act<sup>7</sup>.**

35. The Maintenance Orders (Reciprocal Enforcement) Act is amended as provided for in Schedule 7.

**Amendments to the Magistrates' Court Act<sup>2</sup>**

36. The Magistrates' Court Act is amended as provided for in Schedule 8.

**Amendments to the Judgments (Reciprocal Enforcement) Act<sup>6</sup>.**

37. The Judgments (Reciprocal Enforcement) Act is amended as provided for in Schedule 9.

**Application of the Regulation.**

38. Schedule 10 (which applies certain provisions of this Act with modifications for the purposes of the Regulation) shall have effect.

**Application of Regulation 2201/2003 – jurisdiction and the recognition and enforcement of judgments in matrimonial and parental responsibility matters.**

38A. Schedule 11 shall have effect.

**Application of provisions of the Civil Jurisdiction and Judgments Act 1993 to judicial settlements.**

38B.(1) In this Act “judicial settlements” means judicial settlements referred to in Article 12 of the 2005 Hague Convention.

(2) Sections 6A, 8A and 11A apply to judicial settlements as if they were judgments.

(3) Section 32 applies to judicial settlements as if they were judgments to which the 2005 Hague Convention applies.

**PART V****JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS  
BETWEEN THE UNITED KINGDOM AND GIBRALTAR**

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<sup>7</sup> 1973-23

<sup>2</sup> 1961-23

<sup>6</sup> 1935-04

## **Arrangements between the United Kingdom and Gibraltar.**

39. (1) Gibraltar and the United Kingdom shall be treated as if each were a separate Regulation State for all purposes connected to the operation of—

- (a) the Regulation;
- (b) Regulation 2201/2003.

(2) A court of law shall have regard to, but shall not be bound by, the principles laid down by and any relevant decision of the European Court in determining any question as to the meaning or effect of any provision of the Regulation for the purposes of this section

**SCHEDULE 1.**

Section 4 (2)

**TEXT OF THE 1968 CONVENTION, AS AMENDED****ARRANGEMENT OF PROVISIONS**

<b>TITLE I.</b>	<b>SCOPE (Article 1)</b>
<b>TITLE II.</b>	<b>JURISDICTION</b>
Section 1.	General provisions (Article 2-4).
Section 2.	Special jurisdiction (Articles 5-6A).
Section 3.	Jurisdiction in matters relating to insurance (Articles 7-12A).
Section 4.	Jurisdiction over consumer contracts (Articles 13-15).
Section 5.	Exclusive jurisdiction (Article 16).
Section 6.	Prorogation of jurisdiction (Articles 17 and 18).
Section 7.	Examination as to jurisdiction and admissibility (Articles 19-20).
Section 8.	Lis pendens - Related actions (Articles 21-23).
Section 9.	Provisions, including protective measures (Article 24).
<b>TITLE III.</b>	<b>RECOGNITION AND ENFORCEMENT</b>
	Definition of “judgment” (Article 25).
Section 1.	Recognition (Articles 26-30).
Section 2.	Enforcement (Articles 31-45).
Section 3.	Common Provision (Articles 46-49).
<b>TITLE IV.</b>	<b>AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS.</b>
	(Articles 50-51).
<b>TITLE V.</b>	<b>GENERAL PROVISIONS (Articles 52-53).</b>
<b>TITLE VI.</b>	<b>TRANSITIONAL PROVISIONS</b>
	(Articles 54-54A).
<b>TITLE VII.</b>	<b>RELATIONSHIP TO OTHER CONVENTIONS</b>
	(Articles 55-59).
<b>TITLE VIII.</b>	<b>FINAL PROVISIONS (Articles 60 (deleted) -68).</b>

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**CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF  
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

**Preamble**

The High Contracting Parties to the Treaty establishing the European Economic Community.

Desiring to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals;

Anxious to strengthen in the Community the legal protection of persons therein established;

Considering that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements;

Have decided to conclude this Convention and to this end have designated as their Plenipotentiaries;

*(Designation of Plenipotentiaries of the original six Contracting States).*

Who, meeting with the Council, having exchanged their Full Powers, found in good and due form,

Have agreed as follows:

**TITLE I.**

**SCOPE**

**ARTICLE 1**

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs, or administrative matters.

The Convention shall not apply to:

(1) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

(2) bankruptcy, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(3) social security;

(4) arbitration.

## **TITLE II**

### **JURISDICTION**

#### **Section 1**

#### **General provisions**

#### **ARTICLE 2**

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

#### **ARTICLE 3**

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 to this Title.

In particular the following provisions shall not be applicable as against them:

in Belgium:                      Article 15 of the civil code (Code civil - Burgerlijk Wetboek) and Article 638 of the Judicial code (Code judiciaire Gerechtelijk Wetboek);

in Denmark:	Article 246 (2) and (3) of the law on civil procedure (Lov om rettens pleje);
in the Federal Republic of Germany:	Article 23 of the code of civil procedure (Zivilprozessordnung);
in France:	Articles 14 and 15 of the civil code (Code civil);
in Ireland:	the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland;
in Italy:	Article 2 and Article 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile);
in Luxembourg:	Articles 14 and 15 of the civil code (Code Civil);
in the Netherlands:	Article 126 (3) and Article 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering);
in Portugal:	Article 65 (1) (c) and 65 (2) and 65A (c) of the Code of Civil Procedure (codigo de processo civil) and Article 11 of the code of labour procedure (codigo de proceso de trabalho);
in the United Kingdom:	the rules which enable jurisdiction to be founded on: <ul style="list-style-type: none"><li>(a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or</li><li>(b) the presence within the United Kingdom of property belonging to the defendant; or</li><li>(c) the seizure by the plaintiff of property situated in the United Kingdom.</li></ul>

## ARTICLE 4

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

## **Section 2**

### **Special jurisdiction**

#### **ARTICLE 5**

A person domiciled in a Contracting State may, in another Contracting State, be sued:

- (1) in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated;
- (2) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
- (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
- (4) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- (5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency, or other establishment is situated;
- (6) in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and



evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

- (a) has been arrested to secure such payment; or
- (b) could have been so arrested, but bail or other security has been given:

Provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

## ARTICLE 6

A person domiciled in a Contracting State may also be sued:

- (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;
- (2) as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
- (3) on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
- (4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Contracting State in which the property is situated.

## ARTICLE 6A

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

### Section 3

#### **Jurisdiction in matters relating to insurance.**

**ARTICLE 7**

In matters relating to insurance, jurisdiction shall be determined by this section, without prejudice to the provisions of Articles 4 and 5 (5).

**ARTICLE 8**

An insurer domiciled in a Contracting State may be sued:

- (1) in the courts of the State where he is domiciled; or
- (2) in another Contracting State, in the courts for the place where the policy-holder is domiciled; or
- (3) if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

**ARTICLE 9**

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

**ARTICLE 10**

In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

**ARTICLE 11**

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this section shall not affect the right to bring a counterclaim in the court in which, in accordance with this section, the original claim is pending.

## ARTICLE 12

The provisions of this section may be departed from only by an agreement on jurisdiction:

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this section; or
- (3) which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State; or
- (4) which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State; or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12A.

## ARTICLE 12A

The following are risks referred to in Article 12 (5):

- (1) Any loss of or damage to:
  - (a) sea-going ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
  - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft.

(2) Any liability, other than for bodily injury to passengers or loss of or damage to their baggage,

- (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1)(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks,
- (b) for loss or damage caused by goods in transit as described in (1)(b) above;

(3) Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1)(a) above, in particular loss of freight or charter-hire;

(4) Any risk or interest connected with any of those referred to in (1) to (3) above.

#### **Section 4**

#### **Jurisdiction over consumer contracts**

#### **ARTICLE 13**

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called the “consumer”, jurisdiction shall be determined by this section, without prejudice to the provisions of Articles 4 and 5(5), if it is:

- (1) a contract for the sale of goods on instalment credit terms, or
- (2) a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
- (3) any other contract for the supply of goods or a contract for the supply of services and
  - (a) in the State of the consumer’s domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and
  - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of

the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This section shall not apply to contracts of transport.

## ARTICLE 14

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this section, the original claim is pending.

## ARTICLE 15

The provisions of this section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen, or
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this section, or
- (3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

## Section 5

### Exclusive jurisdiction

## ARTICLE 16

The following courts shall have exclusive jurisdiction, regardless of domicile:

- (1)
  - (a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;

- (b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Contracting State;
- (2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
- (3) in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
- (4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
- (5) in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

## **Section 6**

### **Prorogation of jurisdiction**

#### **ARTICLE 17**

If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either—

- (a) in writing or evidenced in writing, or
- (b) in a form which accords with practices which the parties have established between themselves, or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been

aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of the Convention.

In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it is entered into after the dispute has arisen or if the employee invokes it to seise courts other than those for the defendant's domicile or those specified in Article 5(1).

## **ARTICLE 18**

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusively jurisdiction by virtue of Article 16.

### **Section 7**

#### **Examination as to jurisdiction and admissibility**

## **ARTICLE 19**

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

**ARTICLE 20**

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraphs shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

**Section 8****Lis Pendens -Related actions****ARTICLE 21**

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

**ARTICLE 22**

Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.



## ARTICLE 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

### Section 9

#### Provisional, including protective measures

## ARTICLE 24

Application may be made to the courts of a Contracting State for such provisional, including protective measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

## TITLE III.

### RECOGNITION AND ENFORCEMENT

## ARTICLE 25

For the purposes of this Convention, “judgment” means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

### Section 1

#### Recognition

## ARTICLE 26

A judgment given in a Contracting State shall be recognised in the other Contracting State without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in sections 2 and 3 of this Title, apply for a decision that the judgment be recognised.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

#### ARTICLE 27

A judgment shall not be recognised:

- (1) if such recognition is contrary to public policy in the State in which recognition is sought;
- (2) where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
- (3) if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
- (4) if the court of the State in which the judgment was given, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;
- (5) if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed.

#### ARTICLE 28

Moreover, a judgment shall not be recognised if it conflicts with the provisions of sections 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27(1) may not be applied to the rules relating to jurisdiction.

**ARTICLE 29**

Under no circumstances may a foreign judgment be reviewed.

**ARTICLE 30**

A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

**Section 2**

**Enforcement**

**ARTICLE 31**

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

**ARTICLE 32**

(1) The application shall be submitted—

- in Belgium, to the *tribunal de premiere instance or rechtbank van eerste aanleg*,
- in Denmark, to the byret,
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht ,
- in Greece, to the Μουομελεζ Πρωτοδικείο,
- in Spain, to the Juzgado de Primera Instancia,
- in France, to the presiding judge of the ribunal de grande instance,

- in Ireland, to the High Court,
- in Italy, to the corte d'appello
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
- in Portugal, to the Tribunal Judicial de Circulo,
- In the United Kingdom—
  - (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;
  - (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
  - (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

(2) The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

### **ARTICLE 33**

The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.

The documents referred to in Article 46 and 47 shall be attached to the application.

### **ARTICLE 34**

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to its substance.

## ARTICLE 35

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

## ARTICLE 36

If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

## ARTICLE 37

(1) An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters—

- in Belgium, with the tribunal de premiere instance or rechtbank van eerste aanleg,
- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in Greece, with the εφετειο,
- in Spain, with the Audiencia Provincial,
- in France, with the cour d'appel,
- in Ireland, with the High Court,

- in Italy, with the corte d'appello,
  - in Luxembourg, with the Cour superieure de justice sitting as a court of civil appeal,
  - in the Netherlands, with the arrondissemensrechtbank,
  - in Portugal, with the Tribunal de Relacao,
  - in the United Kingdom—
    - (a) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;
    - (b) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Magistrates' Court;
    - (c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.
- (2) The judgment given on the appeal may be contested only—
- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
  - in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
  - in the Federal Republic of Germany, by a Rechtsbeschwerde,
  - in Ireland, by an appeal on a point of law to the Supreme Court,
  - in Portugal, by an appeal on a point of law,
  - in the United Kingdom, by a single further appeal on a point of law.

### ARTICLE 38

The court with which the appeal under Article 37 (1) is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or in the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

## ARTICLE 39

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorising enforcement shall carry with it the power to proceed to any such protective measures.

## ARTICLE 40

(1) If the application for enforcement is refused, the applicant may appeal—

- in Belgium, to the cour d'appel or hof van beroep,
- in Denmark, to the landsret,
- in the Federal Republic of Germany, to the Oberlandesgericht,
- in Greece, to the εψεττειο,
- in Spain, to the Audiencia Provincial,
- in France, to the cour d'appel,
- in Ireland, to the High Court,
- in Italy, to the corte d'appello,
- in Luxembourg, to the Cour superieure de justice sitting as a court of civil appeal,
- in the Netherlands, to the gerechtshof,
- in Portugal, to the Tribunal da Relaçao,
- in the United Kingdom—
  - (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;

- (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
- (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

(2) The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

#### **ARTICLE 41**

A judgment given on an appeal provided for in Article 40 may be contested only—

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in Portugal, by an appeal on a point of law,
- in the United Kingdom, by a single further appeal on a point of law.

#### **ARTICLE 42**

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

#### **ARTICLE 43**

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

#### **ARTICLE 44**



An applicant who, in the State in which the judgment was given, has benefitted from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

An applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

## **Article 45**

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

## **Section 3**

### **Common provisions**

#### **ARTICLE 46**

A party seeking recognition or applying for enforcement of a judgment shall produce:

- (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- (2) in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

#### **ARTICLE 47**

A party applying for enforcement shall also produce—

- (1) documents which establish that, according to the law of the State of origin the judgment is enforceable and has been served;

(2) where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

#### **ARTICLE 48**

If the documents specified in Article 46(2) and Article 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

#### **ARTICLE 49**

No legislation or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem.

### **TITLE IV.**

#### **AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS**

#### **ARTICLE 50**

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of section 3 of Title III shall apply as appropriate.

#### **ARTICLE 51**

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded, shall be enforceable in the State addressed under the same condition as authentic instruments.

**TITLE V.**

**GENERAL PROVISIONS**

**ARTICLE 52**

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

**ARTICLE 53**

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons, shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

**TITLE VI.**

**TRANSITIONAL PROVISIONS**

**ARTICLE 54**

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instruments is sought, in the State addressed.

However, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention included between the State of origin and the State addressed which was in force when the proceedings were instituted.

If the parties to a dispute concerning a contract had agreed in writing before 1st June 1988 for Ireland or before 1st January 1987 for the United Kingdom that the contract was to be governed by the law of Ireland or of a part of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

#### ARTICLE 54A

For a period of three years from 1st November 1986 for Denmark and from 1st June 1988 from Ireland, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in accordance with the provisions of paragraphs 1 to 6 following. However, upon the entry into force of the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10th May 1952, for one these States, these provisions shall cease to have effect for that State.

(1) A person who is domiciled in a Contracting State may be sued in the courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either:

- (a) the claimant is domiciled in the latter State, or
- (b) the claim arose in the latter State, or
- (c) the claim concerns the voyage during which the arrest was made or could have been made, or
- (d) the claim arises out of a collision or out of damage caused by a ship to another ship or to goods or persons on board either ship, either by the execution or non-execution of a manoeuvre or by the non-observance of regulations, or
- (e) the claim is for salvage, or
- (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.

(2) A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out in 5 (o), (p) or (q) of this Article.

(3) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(4) When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.

(5) The expression “maritime claim” means a claim arising out of one or more of the following:

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connection with the operation on any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) loss of or damage to goods including baggage carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) construction, repair or equipment of any ship or dock charges and dues;
- (m) wages of master, officers or crew;

- (n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- (o) dispute as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
- (q) the mortgage or hypothecation of any ship.

(6) In Denmark, the expression "arrest" shall be deemed as regards the maritime claims referred to in 5(o) and (p) of this Article, to include a "forbud", where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om rettens pleje).

## TITLE VII.

### RELATIONSHIP TO OTHER CONVENTIONS

#### ARTICLE 55

Subject to the provisions of the second paragraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

- the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1989;
- the Convention between Belgium and the Netherlands on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28th March 1925;
- the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- the Convention between the United Kingdom and the French Republic providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Paris on 18 January 1934;

- the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
- the Convention between Germany and Italy on the Recognition and Enforcement of Judgments in Civil and Commercial matters, signed at Rome on 9 March 1936;
- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the Mutual Recognition and Enforcement of Judgments, Arbitration Awards and Authentic Instruments in Civil and Commercial Matters, signed at Bonn on 30 June 1958;
- the Convention between the Kingdom of the Netherlands and the Italian Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 17 April 1959;
- the Convention between the United Kingdom and the Federal Republic of Germany for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Bonn on 14 July 1960;
- the Convention between the Kingdom of Belgium and the Italian Republic on the Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters signed at Rome on 6 April 1962;
- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;
- the Convention between the United Kingdom and the Republic of Italy for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970;
- the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, signed at the Hague on 17th November 1967;
- the Convention between Spain and France on the Recognition and Enforcement of Judgments Arbitration Awards in Civil and Commercial Matters, signed at Paris on 28 May 1969;
- the Convention between Spain and Italy regarding Legal Aid and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Madrid on 22 May 1973;

- the Convention between Spain and the Federal Republic of Germany on the Recognition and Enforcement of Judgments, Settlements and Enforceable Authentic Instruments in Civil and Commercial Matters, signed at Bonn on 14 November 1983;

and, in so far as it is in force:

- the Treaty between Belgium, the Netherlands and Luxembourg on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 24 November 1961.

#### **ARTICLE 56**

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

#### **ARTICLE 57**

(1) This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

(2) With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner—

- (a) this Convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that Convention, even where the defendant is domiciled in another Contracting State which is not a party to that Convention. The court hearing the action shall in any event, apply Article 20 of this Convention;
- (b) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting State in accordance with his Convention.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the



provisions of this Convention which concern the procedure for recognition and enforcement of judgments may be applied.

(3) This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

## ARTICLE 58

Until such time as the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Lugano on 16 September 1988, takes effect with regard to France and the Swiss Confederation, this Convention shall not affect the rights granted to Swiss nationals by the Convention between France and the Swiss Confederation on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15 June 1869.

## ARTICLE 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognise judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognise a judgment given in another Contracting State by a court basing its jurisdiction on the presence within the State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

(1) if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or

(2) if the property constitutes the security for a debt which is the subject matter of the action.

## TITLE VIII

### FINAL PROVISIONS

## ARTICLE 60

*(Deleted)*

#### **ARTICLE 61**

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

#### **ARTICLE 62**

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

#### **ARTICLE 63**

The Contracting States recognise that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member State of the other part.

#### **ARTICLE 64**

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) *(deleted)*;
- (d) any declaration received pursuant to Article IV of the Protocol;
- (e) any communication made pursuant to Article VI of the Protocol.

#### **ARTICLE 65**

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

## ARTICLE 66

This Convention is concluded for an unlimited period.

## ARTICLE 67

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

## ARTICLE 68

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

(Signatures of Plenipotentiaries of the original six Contracting States).

## ANNEXED PROTOCOL

The High Contracting Parties have agreed upon the following provisions which shall be annexed to the Convention.

### ARTICLE I

Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5 (1) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

An agreement conferring jurisdiction, within the meaning of Article 17, shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

### ARTICLE II

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed, may be defended by persons qualified to do so, even if they do not appear in person.

However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

### **ARTICLE III**

In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

### **ARTICLE IV**

Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State addressed who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State addressed. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

### **ARTICLE V**

The jurisdiction specified in Article 6 (2) and Article 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal Republic of Germany. In that State, any person domiciled in another Contracting State may be sued in the courts in pursuance of Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third party notices.

Judgments given in the other Contracting States by virtue of Article 6(2) or Article 10 shall be recognised and enforced in the Federal Republic of Germany in accordance with Title III. Any effects which judgments given in that State may have on third parties by application of Articles 68, 72, 73 and 74 on the code of civil procedure (Zivilprozessordnung) shall also be recognised in the other Contracting States.

### **ARTICLE V A**

In matters relating to maintenance, the expression “court” includes the Danish administrative authorities.

## ARTICLE V B

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark or in Ireland or in Portugal, concerning remuneration or other conditions of service, a court in a Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been duly notified, has exercised the powers accorded to him in the matter by a consular convention, or in the absence of such a convention, has, within the time allowed, raised any objection to the exercise of such jurisdiction.

## ARTICLE V C

Articles 52 and 53 of this Convention shall, when applied by Article 69(5) of the Convention for the European Patent for the Common Market, signed at Luxembourg on 15 December 1975, to the provisions relating to “residence” in the English text of that Convention, operate as if “residence” in that text were the same as “domicile” in Articles 52 and 53.

## ARTICLE V D

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provisions of Article 86 of the Convention for the European Patent for the Common Market, signed at Luxembourg on 15 December 1975.

## ARTICLE VI

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the text of any provisions of their laws which amend either those articles of their laws mentioned in the Convention or the lists of courts specified in section 2 of Title III of the Convention.

(Signatures of Plenipotentiaries of the original six Contracting States).

**SCHEDULE 2.**

Section 4(2)

**TEXT OF 1971 PROTOCOL, AS AMENDED****ARTICLE 1**

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and of the Protocol annexed to that Convention, signed at Brussels on 27 September 1968, and also on the interpretation of the present Protocol.

The Court of Justice of the European Communities shall also have jurisdiction to give rulings on the interpretation of the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention of 27 September 1968 and to this Protocol.

The Court of Justice of the European Communities shall also have jurisdiction to give rulings on the interpretation of the Convention on the Accession of the Kingdom of Spain and the Portuguese Republic to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention and the 1982 Convention.

**ARTICLE 2**

The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

- (1) - in Belgium: La Cour de Cassation - het Hof van Cassatie and le Conseil d'Etat - de Raad van State,
- in Denmark: højesteret,
- in the Federal Republic of Germany: die obersten Gerichtshofe des Bundes,
- in France: la Cour de Cassation and le Conseil d'Etat,
- in Greece: the ανωτάτα δικαστήρια,
- in Ireland: the Supreme Court,
- in Italy: la Corte Suprema di Cassazione,

- in Luxembourg: la Cour superieure de Justice when sitting as Cour de Cassation,
- in the Netherlands: de Hoge Road,
- in Portugal: o Supremo Tribunal de Justicia and o Supremo Tribunal Administrativo,
- in Spain: el Tribunal Supremo,
- in the United Kingdom: the House of Lords and courts to which application has been made under the second paragraph of Article 37 or under Article 41 of the Convention;

(2) the courts of the Contracting States when they are sitting in an appellate capacity;

(3) in the cases provided for in Article 37 of the Convention, the court referred to in that Article.

## ARTICLE 3

(1) Where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 is raised in a case pending before one of the courts listed in Article 2 (1), that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

(2) Where such a question is raised before any court referred to in Article 2 (2) or 3, that court may, under the conditions laid down in paragraph (1), request the Court of Justice to give a ruling thereon.

## ARTICLE 4

(1) The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in judgment of one of the courts of another Contracting State referred to in Article 2(1) or (2). The provisions of this paragraph shall apply only to judgments which have become *res judicata*.

(2) The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.

(3) The Procurators-General of the Courts of Cassation of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph (1).

(4) The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within 2 months of the notification to submit statements of case or written observations to the court.

(5) No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

#### **ARTICLE 5**

(1) Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol of the Statute of the Court of Justice annexed thereto, which are applicable when the court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the Convention and the other instruments referred to in Article 1.

(2) The rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community.

#### **ARTICLE 6**

*(Deleted)*

#### **ARTICLE 7**

This Protocol shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary General of the Council of the European Communities.

#### **ARTICLE 8**

This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step: provided that it shall at the earliest enter into force at the same time as the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

#### **ARTICLE 9**



The Contracting States recognise that any State which becomes a member of the European Community, and to which Article 63 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters applies, must accept the provisions of this Protocol, subject to such adjustments as may be required.

## ARTICLE 10

The Secretary-General of the Council of the European Communities shall notify the signatory States of –

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Protocol;
- (c) any designation received pursuant to Article 4(3);
- (d) *(deleted)*.

## ARTICLE 11

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2(1).

## ARTICLE 12

This Protocol is concluded for an unlimited period.

## ARTICLE 13

Any Contracting State may request the revision of this Protocol. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

## ARTICLE 14

This Protocol, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

## SCHEDULE 3.

Section 4(2)

**TEXT OF TITLES V AND VI OF ACCESSION CONVENTION****TITLE V****TRANSITIONAL PROVISIONS****ARTICLE 34**

- (1) The 1968 Convention and the 1971 Protocol, with the amendments made by this Convention, shall apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of this Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.
- (2) However, as between the six Contracting States to the 1968 Convention, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III of the 1968 Convention as amended.
- (3) Moreover, as between the six Contracting States to the 1968 Convention and the three States mentioned in Article 1 of this Convention and as between those three States, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall also be recognised and enforced in accordance with the provisions of Title III of the 1968 Convention as amended if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended, or with provisions of a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

**ARTICLE 35***(Deleted)***ARTICLE 36***(Deleted)***TITLE VI****FINAL PROVISIONS****ARTICLE 37**

The Secretary-General of the Council of the European Community shall transmit a certified copy of the 1968 Convention and of the 1971 Protocol in

the Dutch, French, German and Italian languages to the Governments of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

The texts of the 1968 Convention and the 1971 Protocol, drawn up in the Danish, English and Irish languages, shall be annexed to this Convention. The texts drawn up in the Danish, English and Irish languages shall be authentic under the same conditions as the original texts of, the 1968 Convention and the 1971 Protocol.

## ARTICLE 38

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

## ARTICLE 39

This Convention shall enter into force, as between the States which shall have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the original Member States of the Community and one new Member State.

It shall enter into force for each new Member State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.

## ARTICLE 40

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification,
- (b) the dates of entry into force of this Convention for the Contracting States.

## ARTICLE 41

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, all seven texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

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**SCHEDULE 4.**

Section 4(2)

**TEXT OF TITLES V AND VI OF 1982 ACCESSION CONVENTION****TITLE V****TRANSITIONAL PROVISIONS****ARTICLE 12**

- (1) The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention and this Convention, shall apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of this Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.
- (2) However, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention, as amended by the 1978 Convention and this Convention, if jurisdiction was founded upon rules which accorded with the provisions of Title II of the 1968 Convention, as amended, or with the provisions of a convention which was in force between the State of origin and the State addressed when the proceedings were instituted.

**TITLE VI.****FINAL PROVISIONS****ARTICLE 13.**

The Secretary-General of the Council of the European Communities shall transmit a certified copy Of the 1968 Convention, of the 1971 Protocol and of the 1978 Convention in the Danish, Dutch, English, French, German, Irish and Italian languages to the Government of the Hellenic Republic.

The Texts of the 1968 Convention, of the 1971 Protocol and of the 1978 Convention. drawn up in the Greek language, shall be annexed to this Convention. The texts drawn up in the Greek language shall be authentic under the same conditions as the other texts of the 1968 Convention, the 1971 Protocol and the 1978 Convention.

**ARTICLE 14**

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

**ARTICLE 15**

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and those States which have put into force the 1978 Convention in accordance with Article 39 of that Convention.

It shall enter into force for each Member State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.

**ARTICLE 16**

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.

**ARTICLE 17**

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages, all eight texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

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**SCHEDULE 5.**

Section 4(2)

**TEXT OF TITLES VI AND VII OF 1989 ACCESSION  
CONVENTION.**

**TITLE VI**

**TRANSITIONAL PROVISIONS****ARTICLE 29**

(1) The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention, the 1982 Convention and this Convention, shall apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of this Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.

(2) However, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention, as amended by the 1978 Convention, the 1982 Convention and this Convention, if jurisdiction was founded upon rules which accorded with the provisions of Title II of the 1968 Convention, as amended, or with the provisions of a convention which was in force between the State of origin and the State addressed when the proceedings were instituted.

**TITLE VII****FINAL PROVISIONS****ARTICLE 30**

(1) The Secretary-General of the Council of the European Communities shall transmit a certified copy of the 1968 Convention, of the 1971 Protocol, of the 1978 Convention and of 1982 Convention in the Danish, Dutch, English, French, German, Irish and Italian languages to the Governments of the Kingdom of Spain and of the Portuguese Republic.

(2) The texts of the 1968 Convention, of the 1971 Protocol, of the 1978 Convention and of the 1982 Convention, drawn up in the Portuguese and Spanish languages, are set out in Annexes II, III, IV and V to this Convention. The texts drawn up in the Portuguese and Spanish languages shall be authentic under the same conditions as the other texts of the 1968 Convention, the 1971 Protocol, the 1978 Convention and the 1982 Convention.

**ARTICLE 31**

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

**ARTICLE 32**

(1) This Convention shall enter into force on the first day of the third month following the date on which two signatory States, of which one is the Kingdom of Spain or the Portuguese republic, deposit their instruments of ratification.

(2) This Convention shall take effect in relation to any other signatory State on the first day of the third month following the deposit of its instrument of ratification.

**ARTICLE 33**

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.

**ARTICLE 34**

This Convention, drawn up in a single original in the Danish; Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

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**SCHEDULE 6.**

Section 4(4)

CONVENTION

on jurisdiction and the enforcement of judgements in civil and commercial matters

*Done at Lugano on 16 September 1988*

(88/592/EEC)

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THIS CONVENTION,

ANXIOUS to strengthen in their territories the legal protection of persons therein established,

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements,

AWARE of the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Economic Community and the States members of the European Free Trade Association,

TAKING INTO ACCOUNT the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Accession Conventions under the successive enlargements of the European Communities,

PERSUADED that the extension of the principles of that Convention to the States parties to this instrument will strengthen legal and economic co-operation in Europe,

DESIRING to ensure as uniform an interpretation as possible of this instrument,

HAVE in this spirit DECIDED to conclude this Convention and

HAVE AGREED AS FOLLOWS:

#### **TITLE I**

#### **SCOPE**

#### **ARTICLE 1.**

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;



2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, composition and analogous proceedings;

3. social security;

4. arbitration.

## **TITLE II**

### **JURISDICTION**

#### Section 1

#### General provisions

### **ARTICLE 2**

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

### **ARTICLE 3**

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them:

- in Belgium: Article 15 of the civil code (Code civil - Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire -Gerehtelijk Wetboek),

- in Denmark: Article 246(2) and (3) of the law on civil procedure (Lov om retsens pleje),

- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung),

- in Greece: Article 40 of the code of civil procedure (Κωδικαζ πολιτικηζ δικονομιαζ),

in France: Articles 14 and 15 of the civil code (Code civil),

- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,

- in Iceland: Article 77 of the Civil Proceedings Act (lög um meðferð einlamála í héraði),

- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),

- in Luxembourg: Articles 14 and 15 of the civil code (Code civil),

in the Netherlands: Articles 126(3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),

in Norway: Section 32 of the Civil Proceedings Act (tvistemalsloven),

- in Austria: Article 99 of the Law of Court Jurisdiction (Jurisdiktionsnorm),

- in Portugal: Articles 65(1)(c), 65(2) and 65A(c) of the code of civil procedure (Codigo de Processo Civil) and Article 11 of the code of labour procedure (Código de Processo de Trabalho),

- in Switzerland: le for du lieu du séquestre/Gerichtsstand des Arrestortes/foro del luogo del sequestro within the meaning of Article 4 of the loi fédérale sur le droit international privé/Bundesgesetz über das internationale Privatrecht/legge federal sul diritto internazionale privato,

- in Finland: the second, third and fourth sentences of Section 1 of Chapter 10 of the Code of Judicial Procedure (oikeudenkäymiskaari/rättegångsbalken),

- in Sweden: the first sentence of Section 3 of Chapter 10 of the Code of Judicial Procedure (Rättegångsbalken),

- in the United Kingdom: the rules which enable jurisdiction to be founded on:

- (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
- (b) the presence within the United Kingdom of property belonging to the defendant; or
- (c) the seizure by the plaintiff of property situated in the United Kingdom.

## ARTICLE 4

If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

### Section 2

#### Special jurisdiction

## ARTICLE 5

A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

6. in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

- (a) has been arrested to secure such payment, or
- (b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

#### ARTICLE 6

A person domiciled in a Contracting State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;
2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property in the court of the Contracting State in which the property is situated.

#### ARTICLE 6A

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

## Section 3

Jurisdiction in matters relating to insurance

### **ARTICLE 7**

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5).

### **ARTICLE 8**

An insurer domiciled in a Contracting State may be sued:

1. in the courts of the State where he is domiciled, or
2. in another Contracting State, in the courts for the place where the policyholder is domiciled; or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

### **ARTICLE 9**

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies of movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

### **ARTICLE 10**

In respect of liability insurance, the insurance may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

**ARTICLE 11**

Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.

The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section the original claim is pending.

**ARTICLE 12**

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State; or
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State; or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12A.

**ARTICLE 12A**

The following are the risks referred to in Article 12(5):

1. any loss of or damage to:
  - (a) sea-going ships, installations situated off-shore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes,

- (b) goods in transit other than passenger's baggage where the transit consists of or includes carriage by such ships or aircraft;
- 2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage;
  - (a) arising out of the use or operation of ship, installations or aircraft as referred to in (1)(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
  - (b) for loss or damage caused by goods in transit as described in (1)(b) above;
- 3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1)(a) above, in particular loss of freight or charter-hire;
- 4. any risk or interest connected with any of those referred to in (1) to (3) above.

## Section 4

### Jurisdiction over consumer contracts

#### **ARTICLE 13**

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called "the consumer", jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5), if it is:

- 1. a contract for the sale of goods on instalment credit terms; or
- 2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- 3. any other contract for the supply of goods or a contract for the supply of services, and
  - (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and

- (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This Section shall not apply to contracts of transport.

#### **ARTICLE 14**

A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with the Section, the original claim is pending.

#### **ARTICLE 15**

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

#### Section 5

Exclusive jurisdiction

#### **ARTICLE 16**



The following courts shall have exclusive jurisdiction; regardless of domicile:

1. (a) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;
- (b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and neither party is domiciled in the Contracting State in which the property is situated;
2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
5. in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

## Section 6

### **Prorogation of jurisdiction**

#### **ARTICLE 17**

1. If the parties one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing, or
- (b) in a form which accords with practices which the parties have established between themselves, or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

2. The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

3. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

4. If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.

5. In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it entered into after the dispute has arisen.

#### **ARTICLE 18**

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction or where another court has exclusive jurisdiction by virtue of Article 16.

#### Section 7

Examination as to jurisdiction and admissibility

## ARTICLE 19

Where a court of a Contracting State is seised of a claim which is Principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

## ARTICLE 20

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

### Section 8

*Lis Pendens* - related actions

## ARTICLE 21

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

## ARTICLE 22

Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

### **ARTICLE 23**

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

#### Section 9

Provisional, including protective, measures

### **ARTICLE 24**

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

## TITLE III

### RECOGNITION AND ENFORCEMENT

### **ARTICLE 25**

For the purposes of this Convention, “judgement” means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

#### Section 1

Recognition

### **ARTICLE 26**

A judgment given in a Contracting State shall be recognised in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgement as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognised.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

## ARTICLE 27

A judgment shall not be recognised:

1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with equivalent document in sufficient time to enable him to arrange for his defence;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State of origin, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule on the private international law of the State in which the recognition sought, unless the same result would have been reached by the application of the rules of private international law of that State;
5. if the judgment is irreconcilable with an earlier judgment given in non-contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the condition necessary for its recognition in the State addressed.

## ARTICLE 28

Moreover, a judgment shall not be recognised if it conflicts with the provisions of Sections 3, 4 or 5 of Title II or in a case provided for Article 59.

A judgment may furthermore be refused recognition in any case provided for Article 54B(3) or 57(4).

In its examination of the grounds of jurisdiction referred to in the foregoing paragraphs, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.

Subject to the provisions of the first and second paragraphs, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in Article 27(1) may not be applied to the rules relating to jurisdiction.

#### **ARTICLE 29**

Under no circumstances may a foreign judgment be reviewed as to its substance.

#### **ARTICLE 30**

A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin by reason of an appeal.

#### Section 2.

#### Enforcement

#### **ARTICLE 31**

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

#### **ARTICLE 32**

1. The application shall be submitted:

- in Belgium, to the tribunal de premiere instance or rechtbank van eerste aanleg,

- in Denmark, to the byret,
- in The Republic of Germany, to the presiding judge of a chamber of the Landgericht,
- in Spain, to the Juzgado de Primera Instancia,
- in France, to the presiding judge of the tribunal de grande instance,
- in Greece, to the Μουομελεζ Πρωτοδικείο,
- in Ireland, to the High Court,
- in Iceland, to the hérðasdómari,
- in Italy, to the corte d'appello,
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
- in Norway, to the herredsrett or byrett as namsrett,
- in Austria, to the Landesgericht or the Kreisgericht,
- in Portugal, to the Tribunal Judicial de Circulo,
- in Switzerland:
  - (a) in respect of judgments ordering the payment of a sum of money, to the juge de la mainlevée/Rechtsöffnungsrichter/giudice competente a pronunciare sul rigetto dell'opposizione, within the framework of the procedure governed by Articles 80 and 81 of the loi federale sur la poursuite pour dettes et la faillite/Bundesgesetz über Schuldbetreibung und Konkurs/legge federale sulla esecuzione e sul fallimento;
  - (b) in respect of judgments ordering a performance other than the payment of a sum of money, to the juge cantonal d'exequatur compétent/zuständiger kantonaler Vollstreckungsrichter/giudice cantonale competente a pronunciare l'exequatur,
- in Finland, to the ulosotonhaltija/överexekutor,
- in Sweden, to the Svea hovrätt,

- in the United Kingdom:

- (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrate's Court on transmission by the Secretary of State;
- (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;
- (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

2. The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

#### **ARTICLE 33**

The procedure for making the application shall be governed by the law of the State in which enforcement is sought. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The documents referred to in Articles 46 and 47 shall be attached to the application.

#### **ARTICLE 34**

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to its substance.

#### **ARTICLE 35**

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.



## ARTICLE 36

If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

## ARTICLE 37

1. An appeal against the decision authorising enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

- in Belgium, with the tribunal de première instance or rechtbank van eerste aanleg,
- in Denmark, with the landsret,
- in the federal Republic of Germany, with the Oberlandesgerichy,
- in Greece, with the εψετειο,
- in Spain, with the Audiencia Provincial,
- in France, with the cour d'appel,
- in Ireland, with the High Court,
- in Iceland, with the héraðsdómari,
- in Italy, with the corte d'appello,
- in Luxembourg, with the Cour supérieure de justice sitting as a court of civil appeal,
- in the Netherlands, with the arrondissementsrechtbank in Norway, with the lagmannsrett,
- in Austria, with the Landesgericht or the Kreisgericht,
- in Portugal, with the Tribunal da Relação,
- in Switzerland, with the tribunal cantonal/Kantonsgericht/tribunale cantonale,

- in Finland, with the hovioikeus/hovrätt,
  - in Sweden, with the Svea hovrätt,
  - in the United Kingdom:
    - (a) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrate's Court,
    - (b) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court,
    - (c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.
2. The judgment given on the appeal may be contested only:
- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
  - in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
  - in the Federal Republic of Germany, by a Rechtsbeschwerde,
  - in Ireland, by an appeal on a point of law to the Supreme Court,
  - in Iceland, by an appeal to the Haestiréttur,
  - in Norway, by an appeal (kjaeremal or anke) to the Hoyesteretts Kjaeremalsutvalg or Hoyesterett,
  - in Austria, in the case of an appeal, by a Revisionsrekurs and, in the case of opposition proceedings, by a Berufung with the Possibility of a Revision,
  - in Portugal, by an appeal on a point of law,
  - In Switzerland, by a recours de droit public devant le tribunal fédéral/staats-rechtliche Beschwerde beim Bundesgericht/ricorso de diritto pubblico davanti al tribunale federale,
  - in Finland, by an appeal to the korkein oikeus/högsta domstolen,
  - in Sweden, by an appeal to the högsta domstolen,
  - in the United Kingdom, by a single further appeal on a point of law.

**ARTICLE 38**

The court with which the appeal under Article 37(1) is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

**ARTICLE 39**

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorising enforcement shall carry with it the power to proceed to any such protective measures.

**ARTICLE 40**

1. If the application for enforcement is refused, the applicant may appeal:

- in Belgium, to the cour d'appel or hof van beroep,
- in Denmark, to the landsret,
- in the Federal Republic of Germany, to the Oberlandesgericht,
- in Greece, to the εφετειο,
- in Spain, to the Audiencia Provincial,
- in France, to the cour d'appel,
- in Ireland, to the High Court,
- in Iceland, to the héraosdómari,
- in Italy, to the corte d'appello,

- in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,
- in the Netherlands, to the gerechtshof,
- in Norway, to the lagmannsrett,
- in Austria, to the Landesgericht or the Kreisgericht,
- in Portugal, to the Tribunal da Relação,
- in Switzerland, to the tribunal cantonal/Kantonsgericht/tribunale,
- in Finland, to the hovioikeus/hovrätt,
- in Sweden, to the Svea hovrätt,
- in the United Kingdom:
  - (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrate's Court;
  - (b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;
  - (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrate's Court.

2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

#### **ARTICLE 41**

A judgment given on an appeal provided for in Article 40 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court.

- in Iceland, by an appeal to the Haestiréttur,
- in Norway, by an appeal (kjaeremal or anke) to the Hoyesteretts kjaeremalsutvalg or Hoyesterett,
- in Austria, by a Revisionsrekurs,
- in Portugal, by an appeal on a point of law,
- in Switzerland, by a recours de droit public devant le tribunal fédéral/staatsrechtliche Beschwerde beim Bundesgericht/ricorso di diritto pubblico davanti al tribunale federale,
- in Finland, by an appeal to the korkein oikeus/högsta domstolen,
- in Sweden, by an appeal to the högsta domstolen,
- in the United Kingdom, by a single further appeal on a point of law.

## ARTICLE 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

## ARTICLE 43

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

## ARTICLE 44

An applicant who, in the State of origin, has benefitted from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aids or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark or in Iceland in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from, respectively, the Danish

Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfills the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

#### **ARTICLE 45**

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

#### Section 3

#### Common provisions

#### **ARTICLE 46**

A party seeking recognition or applying for enforcement of a judgment shall produce:

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

#### **ARTICLE 47**

A party applying for enforcement shall also produce:

1. documents which establish that according to the law of the State of origin, the judgment is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

#### **ARTICLE 48**

If the documents specified in Article 46(2) and Article 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

## ARTICLE 49

No legislation or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative *ad litem*.

## TITLE IV

### AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

## ARTICLE 50

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

## ARTICLE 51

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments.

## TITLE V

### GENERAL PROVISIONS

## ARTICLE 52

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.

If a party is not domiciled in the State whose Courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

### **ARTICLE 53**

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

## **TITLE VI**

### **TRANSITIONAL PROVISIONS**

### **ARTICLE 54**

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.

However, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

If the parties to a dispute concerning a contract had agreed in writing before the entry into force of this Convention that the contract was to be governed by the law of Ireland or of a part of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

### **ARTICLE 54A**

For a period of three years from the entry into force of this Convention for Denmark, Greece, Ireland, Iceland, Norway, Finland and Sweden, respectively, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in



accordance with the provisions of paragraphs 1 to 7 following. However, upon the entry into force of the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952, for one of these States these provisions shall cease to have effect for that State.

1. A person who is domiciled in a Contracting State may be sued in the courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either:

- (a) the claimant is domiciled in the latter State; or
- (b) the claim arose in the latter State; or
- (c) the claim concerns the voyage during which the arrest was made or could have been made; or
- (d) the claim arises out of a collision or out of damage caused by a ship to another ship or to goods or persons on board either ship, either by the execution or non execution of a manoeuvre or by the non observance of regulations; or
- (e) the claim is for salvage; or
- (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.

2. A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out under 5(o), (p) or (q) of this Article.

3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owners may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.

5. The expression “maritime claim” means a claim arising out of one or more of the following:

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connection with the operation on any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) loss of or damage to goods including baggage carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) construction, repair or equipment of any ship or dock charges and dues;
- (m) wages of masters, officers or crew;
- (n) master’s disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
- (o) dispute as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
- (q) the mortgage or hypothecation of any ship.

6. In Denmark, the expression “arrest” shall be deemed as regards the maritime claims referred to under 5(o) and (p) of this Article, to include a

“forbud”, where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om terrens pleje).

7. In Iceland, the expression “arrest” shall be deemed, as regards the maritime claims referred to under 5(o) and (p) of this Article, to include a “lögbann”, where that is the only procedure allowed in respect of such a claim under Chapter III of the law on arrest and injunction (lög urn kyrresetningu og lögbann).

## TITLE VII

### RELATIONSHIP TO THE BRUSSELS CONVENTION AND TO OTHER CONVENTIONS

#### ARTICLE 54B

1. This Convention shall not prejudice the application by the Member States of the European Communities of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968 and of the Protocol on interpretation of that Convention by the Court of Justice, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, all of these Conventions and the Protocol being hereinafter referred to as the “Brussels Convention”.

2. However, this Convention shall in any event be applied:

- (a) in matters of jurisdiction, where the defendant is domiciled in the territory of a Contracting State which is not a member of the European Communities, or where Articles 16 or 17 of this Convention confer a jurisdiction on the courts of such a Contracting State;
- (b) in relation to a *lis pendens* or to related actions as provided for in Articles 21 and 22, when proceedings are instituted in a Contracting State which is not a member of the European Communities and in a Contracting State which is a member of the European Communities;
- (c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not a member of the European Communities.

3. In addition to the grounds provided for in Title III recognition or enforcement may be refused if the ground of jurisdiction on which that

judgment has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a Contracting State which is not a member of the European Communities, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

#### ARTICLE 55

Subject to the provisions of the second paragraph of Article 54(2) and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

- the Convention between the Swiss Confederation and France on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15 June 1869,
- the Treaty between the Swiss Confederation and Spain on the mutual enforcement of judgments in civil or commercial matters, signed at Madrid on 19 November 1896,
- the Convention between the Swiss Confederation and the German Reich on the recognition and enforcement of judgments and arbitration awards, signed at Berne on 2 November 1929,
- the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgments, signed at Copenhagen on 16 March 1932,
- the Convention between the Swiss Confederation and Italy on the recognition and enforcement of judgments, signed at Rome on 3 January 1933,
- the Convention between Sweden and the Swiss Confederation on the recognition and enforcement of judgments and arbitral awards signed at Stockholm on 15 January 1936,
- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,
- the Convention between the Swiss Confederation and Belgium on the recognition and enforcement of judgments and arbitration awards, signed at Berne on 29 April 1959,

- the Convention between the Federal republic of Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,
- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,
- the Convention between Austria and the Swiss Confederation on the recognition and enforcement of judgments, signed at Berne on 16 December 1960,
- the Convention between Norway and the United Kingdom providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at London on 12 June 1961,
- the Convention between the United Kingdom and Austria providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Vienna on 14 July 1961, with amending Protocol signed at London on 6 March 1970,
- the Convention between the Kingdom of the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,
- the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,
- the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,
- the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,
- the Convention between Norway and the Federal Republic of Germany on the recognition and enforcement of judgments and enforceable documents, in civil and commercial matters, signed at Oslo on 17 June 1977,

- the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11 October 1977,
- the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982,
- the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,
- the Convention between Norway and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 21 May 1984, and
- the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986.

#### **ARTICLE 56**

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

#### **ARTICLE 57**

1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. This Convention shall not prevent a court of a Contracting State which is party to a convention referred to in the first paragraph from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in a Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.

3. Judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention referred to in the first paragraph shall be recognised and enforced in the other Contracting States in accordance with Title III of this Convention.

4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not a contracting party to a convention referred to in the first paragraph and the person against whom recognition or enforcement is sought is domiciled in that State, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

5. Where a convention referred to in the first paragraph to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedures for recognition and enforcement of judgments may be applied.

## **ARTICLE 58**

*(None)*

## **ARTICLE 59**

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognise judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognise a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it or arises from another issue relating to such property,
2. if the property constitutes the security for a debt which is the subject-matter of the action.

## **TITLE VIII**

### **FINAL PROVISIONS**

## **ARTICLE 60**

The following may be parties to this Convention:

- (a) States which, at the time of the opening of this Convention for signature are members of the European Communities or of the European Free Trade Association;
- (b) States which, after the opening of this Convention for signature, become members of the European Communities or of the European Free Trade Association;
- (c) States invited to accede in accordance with Article 62(1)(b).

#### **ARTICLE 61**

1. This Convention shall be opened for signature by the States members of the European Communities or of the European Free Trade Association.
2. The Convention shall be submitted for ratification by the signatory States. The instruments of ratification shall be deposited with the Swiss Federal Council.
3. The Convention shall enter into force on the first day of the third month following the date on which two States, of which one is a member of the European Communities and the other a member of the European Free Trade Association, deposit their instruments of ratification.
4. The Convention shall take effect in relation to any other signatory State on the first day of the third month following the deposit of its instrument of ratification.

#### **ARTICLE 62**

1. After entering into force this Convention shall be open to accession by:
  - (a) the States referred to in Article 60(b),
  - (b) other States which have been invited to accede upon a request made by one of the Contracting States to the depositary State. The depositary State shall invite the State concerned to accede only if, after having communicated the contents of the communications that this State intends to make in accordance with Article 63, it has obtained the unanimous agreement of the signatory States and the Contracting States referred to in Article 60(a) and (b).



2. if an acceding State wishes to furnish details for the purposes of Protocol No.1, negotiations shall be entered into to that end. A negotiating conference shall be convened by the Swiss Federal Council.

3. In respect of an acceding State, the Convention shall take effect on the first day of the third month following the deposit of its instrument of accession.

4. However, in respect of an acceding State referred to in paragraph 1(a) or (b), the Convention shall take effect only in relations between the acceding State and the Contracting States which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

## ARTICLE 63

Each acceding State shall, when depositing its instrument of accession, Communicate the information required for the application of Articles 3, 32, 37, 40, 41 and 55 of this Convention and furnish, if need be, the details prescribed during the negotiations for the purposes of Protocol No.1.

## ARTICLE 64

1. This Convention is Concluded for an initial period of five years from the date of its entry into force in accordance with Article 61(3), even in the case of States which ratify it or accede to it after that date.

2. At the end of the initial five-year period, the Convention shall be automatically renewed from year to year.

3. Upon the expiry of the initial five-year period, any Contracting State may, at any time, denounce the Convention by sending a notification to the Swiss Federal Council.

4. The denunciation shall take effect at the end of the calendar year following, the expiry of a period of Six months from the date of receipt by the Swiss Federal Council of the notification of denunciation.

## ARTICLE 65

The following are annexed to this Convention:

- a Protocol No.1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol No. 2, on the uniform interpretation of the Convention,

- a Protocol No.3, on the application of Article 57.

These Protocols shall form an integral part of the Convention.

#### **ARTICLE 66**

Any Contracting State may request the revision of this Convention. To that end, the Swiss Federal Council shall issue invitations to a revision conference within a period of six months from the date of the request for revision.

#### **ARTICLE 67**

The Swiss Federal Council shall notify the States represented at the Diplomatic Conference of Lugano and the States who have later acceded to the Convention of:

- (a) the deposit of each instrument of ratification or accession,
- (b) the dates of entry into force of this Convention in respect of the Contracting States;
- (c) any denunciation received pursuant to Article 64;
- (d) any declaration received pursuant to Article Ia of Protocol No.1;
- (e) any declaration received pursuant to article Ib of Protocol No.1;
- (f) any declaration received pursuant to Article IV of Protocol No.1;
- (g) any Communication made pursuant to Article VI of Protocol No.1.

#### **ARTICLE 68**

This Convention drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, all fourteen texts being equally authentic, shall be deposited in the archives of the Swiss Federal Council. The Swiss Federal Council shall transmit a certified copy to the Government of each State represented at the Diplomatic Conference of Lugano and to the Government of each acceding State.

In witness whereof, the undersigned Plenipotentiaries have signed this Convention.

Done at Lugano on the sixteenth day of September in the year one thousand nine hundred and eighty-eight.

[Signatures]

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## PROTOCOL No.1

on certain questions of jurisdiction, procedure and enforcement

THE HIGH CONTRACTING PARTIES HAVE AGREED UPON THE FOLLOWING PROVISIONS, WHICH SHALL BE ANNEXED TO THE CONVENTION:

### ARTICLE 1

Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court.

If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

An agreement conferring jurisdiction, within the meaning of Article 7, shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

### ARTICLE Ia

I. Switzerland reserves the right to declare, at the time of depositing its instrument of ratification, that a judgment given in another Contracting State shall be neither recognised nor enforced in Switzerland if the following conditions are met:

- (a) the jurisdiction of the court which has given the judgment is based only on Article 5(1) of this Convention; and
- (b) the defendant was domiciled in Switzerland at the time of the introduction of the proceedings; for the purposes of this Article, a company or other legal person is considered to be domiciled in Switzerland if it has its registered seat and the effective centre of activities in Switzerland; and
- (c) the defendant raises an objection to the recognition or enforcement of the judgment in Switzerland, provided that he

has not waived the benefit of the declaration foreseen under this paragraph.

2. This reservation shall not apply to the extent that at the time recognition or enforcement is sought a derogation has been granted from Article 59 of the Swiss Federal Constitution. The Swiss Government shall communicate such derogations to the signatory States and the acceding States.

3. This reservation shall cease to have effect on 31 December 1999. It may be withdrawn at any time.

#### **ARTICLE Ib**

Any Contracting State may, by declaration made at the time of signing or of deposit of its instrument of ratification or of accession, reserve the right, notwithstanding the provisions of Article 28, not to recognise and enforce judgments given in the other Contracting States if the jurisdiction of the court of the State of origin is based, pursuant to Article 16(1)(b), exclusively on the domicile of the defendant in the State of origin, and the property is situated in the territory of the State which entered the reservation.

#### **ARTICLE II**

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

#### **ARTICLE III**

In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

#### **ARTICLE IV**

Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Swiss Federal Council, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

## ARTICLE V

The jurisdiction specified in Articles 6(2) and 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal Republic of Germany, in Spain, in Austria and in Switzerland. Any person domiciled in another Contracting State may be sued in the courts:

- of the Federal Republic of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices;
- of Spain, pursuant to Article 1482 of the civil code;
- of Austria, pursuant to article 21 of the code of civil procedure (zivilprozessordnung) concerning third-party notices;
- of Switzerland, pursuant to the appropriate provisions concerning third-party notices of the cantonal codes of civil procedure.

Judgments given in the other Contracting States by virtue of Article 6(2) or Article 10 shall be recognised and enforced in the Federal Republic of Germany, in Spain, in Austria and in Switzerland in accordance with Title III. Any effects which judgment given in these States may have on third parties by application of the provisions in the preceding paragraph shall also be recognised in the other Contracting States.

## ARTICLE Va

In matters relating to maintenance, the expression “court” includes the Danish, Icelandic and Norwegian administrative authorities.

In civil and commercial matters, the expression “court” includes the Finnish ulosoton haltija/överexekutor.

**ARTICLE Vb**

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark, in Greece, in Ireland, in Iceland, in Norway, in Portugal or in Sweden concerning remuneration or other conditions of service, a court in a Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been duly notified, has exercised the powers accorded to him in the matter by a consular convention, or in the absence of such a convention has, within the time allowed, raised any objection to the exercise of such jurisdiction.

**ARTICLE Vc**

*(None)*

**ARTICLE Vd**

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the grant of European patents, signed at Munich on 5 October 1973, the courts of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provision of Article 86 of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975.

**ARTICLE VI**

The Contracting States shall communicate to the Swiss Federal Council the text of any provisions of their laws which amend either those provisions of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III.

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**PROTOCOL No. 2**

on the uniform interpretation of the Convention

**PREAMBLE**

THE HIGH CONTRACTING PARTIES,

HAVING REGARD to Article 65 of this Convention,

CONSIDERING the substantial link between this Convention and the Brussels Convention,

CONSIDERING that the Court of Justice of the European Communities by virtue of the Protocol of 3 June 1971 has jurisdiction to give rulings on the interpretation of the provisions of the Brussels Convention,

BEING AWARE of the rulings delivered by the Court of Justice of the European Communities on the interpretation of the Brussels Convention up to the time of signature of this Convention,

CONSIDERING that the negotiations which led to the conclusion of the Convention were based on the Brussels Convention in the light of these rulings,

DESIRING to prevent, in full defence to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of the Convention, and of these provisions and those of the Brussels Convention which are substantially reproduced in this Convention,

HAVE AGREED AS FOLLOWS:

## **ARTICLE 1**

The courts of each Contracting State shall, when applying and interpreting the provisions of the Convention, pay due account to the principles laid down by any relevant decision delivered by courts of the other Contracting States concerning provisions of this Convention.

## **ARTICLE 2**

1. The Contracting Parties agree to set up a system of exchange of information concerning judgments delivered pursuant to this Convention as well as relevant judgments under the Brussels Convention. This system shall comprise:

- transmission to a central body by the competent authorities of judgments delivered by courts of last instance and the Court of Justice of the European Communities as well as judgments of particular importance which have become final and have been delivered pursuant to this Convention or the Brussels Convention;
- classification of these judgments by the central body including, as far as necessary, the drawing-up and publication of translations and abstracts;

- communication by the central body of the relevant documents to the competent national authorities of all signatories and acceding States to the Convention and to the Commission of the European Communities.

2. The central body is the Registrar of the Court of Justice of the European Communities.

### **ARTICLE 3**

1. A Standing Committee shall be set up for the purpose of this Protocol.

2. The Committee shall be composed of representatives appointed by each signatory and acceding State.

3. The European Communities (Commission, Court of Justice and General Secretariat of the Council) and the European Free Trade Association may attend the meetings as observers.

### **ARTICLE 4**

1. At the request of a Contracting Party, the depository of the Convention shall convene meetings of the Committee for the purpose of exchanging views on the functioning of the Convention and in particular on:

- the development of the case law as communicated under the first paragraph first indent of Article 2;

- the application of Article 57 of the Convention.

2. The Committee, in the light of these exchanges, may also examine the appropriateness of starting on particular topics a revision of the Convention and make recommendations.

### **PROTOCOL No. 3**

on the application of Article 57

**THE HIGH CONTRACTING PARTIES HAVE AGREED AS FOLLOWS:**

1. For the purposes of the Convention, provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are, or will be contained in acts of the Institutions of



the European Communities shall be treated in the same way as the conventions referred to in paragraph 1 of Article 57.

2. If one Contracting State is of the opinion that a provision contained in an act of the Institutions of the European Communities is incompatible with the Convention, the Contracting States shall promptly consider amending the Convention pursuant to Article 66, without prejudice to the procedure established by Protocol No. 2.

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## DECLARATION

by the representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Communities on Protocol No.3 on the application of Article 57 of the Convention

Upon signature of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988,

### **THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,**

*taking into account* the undertakings entered into vis-à-vis the Member States of the European Free Trade Association,

*anxious* not to prejudice the unity of the legal system set up by the Convention,

*declare* that they will take all measures in their powers to ensure, when Community acts referred to in paragraph 1 of Protocol No. 3 on the application of Article 57 are being drawn up, respect for the rules of jurisdiction and recognition and enforcement of judgments established by the Convention.

In witness whereof, the undersigned have signed this Declaration.

Done at Lugano on the sixteenth day of September in the year one thousand nine hundred and eighty eight.

[Signatures]

## DECLARATION

by the Representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Communities

Upon signature of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988,

**THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES**

*declare* that they consider as appropriate that the Court of Justice of the European Communities, when interpreting the Brussels Convention, pay due attention to the rulings contained in the case law of the Lugano Convention.

In witness whereof, the undersigned have signed this Declaration.

Done at Lugano on the sixteenth day of September in the year one thousand nine hundred and eighty-eight

[Signatures]

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**DECLARATION**

by the Representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Communities

Upon signature of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988,

**THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN FREE TRADE ASSOCIATION**

*declare* that they consider as appropriate that their courts, when interpreting the Lugano Convention, pay due account to the rulings contained in the case law of the Court of Justice of the European Communities and of courts of the Member States of the European Communities in respect of provisions of the Brussels Convention which are substantially reproduced in the Lugano Convention.

In witness whereof, the undersigned have signed this Declaration.

Done at Lugano on the sixteenth day of September in the year one thousand nine hundred and eighty-eight

[Signatures]

FINAL ACT

The Representatives of:

THE GOVERNMENT OF THE KINGDOM OF BELGIUM,

THE GOVERNMENT OF THE KINGDOM OF DENMARK,

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE GOVERNMENT OF THE HELLENIC REPUBLIC,

THE GOVERNMENT OF THE KINGDOM OF SPAIN,

THE GOVERNMENT OF THE FRENCH REPUBLIC,

THE GOVERNMENT OF IRELAND,

THE GOVERNMENT OF THE REPUBLIC OF ICELAND,

THE GOVERNMENT OF THE ITALIAN REPUBLIC,

THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG,

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS,

THE GOVERNMENT OF THE KINGDOM OF NORWAY,

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA,

THE GOVERNMENT OF THE PORTUGUESE REPUBLIC,

THE GOVERNMENT OF THE KINGDOM OF SWEDEN,

THE GOVERNMENT OF THE SWISS CONFEDERATION,

THE GOVERNMENT OF THE REPUBLIC OF FINLAND,

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND,

Assembled at Lugano on the sixteenth day of September in the year one thousand nine hundred and eighty-eight on the occasion of the Diplomatic Conference on jurisdiction in civil matters, have placed on record the fact that the following texts have been drawn up and adopted within the Conference:

I. the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters;

II. the following Protocols, which form an integral part of the Convention:

- No. 1, on certain questions of jurisdiction, procedure and enforcement;
- No.2, on the uniform interpretation of the Convention;
- No.3, on the application of Article 57;

III. the following Declarations:

- Declaration by the Representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Communities on Protocol No.3 on the application of Article 57 of the Convention;
- Declaration by the Representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Communities;
- Declaration by the Representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Free Association.

[Signatures]

**SCHEDULE 6A.**

Section 4(6)

**CONVENTION ON CHOICE OF COURT AGREEMENTS**

(Concluded on 30 June 2005)

The States Parties to the present Convention,  
Desiring to promote international trade and investment through enhanced  
judicial co-operation, Believing that such co-operation can be enhanced by  
uniform rules on jurisdiction and on recognition and enforcement of foreign  
judgments in civil or commercial matters,  
Believing that such enhanced co-operation requires in particular an  
international legal regime that provides certainty and ensures the  
effectiveness of exclusive choice of court agreements between parties to  
commercial transactions and that governs the recognition and enforcement of  
judgments resulting from proceedings based on such agreements,  
Have resolved to conclude this Convention and have agreed upon the  
following provisions –

**CHAPTER I – SCOPE AND DEFINITIONS**

Article 1  
Scope

- (1) This Convention shall apply in international cases to exclusive choice of court agreements concluded in civil or commercial matters.
- (2) For the purposes of Chapter II, a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State.
- (3) For the purposes of Chapter III, a case is international where recognition or enforcement of a foreign judgment is sought.

Article 2  
Exclusions from scope

- (1) This Convention shall not apply to exclusive choice of court agreements –



## Article 3 Exclusive choice of court agreements

For the purposes of this Convention-

- a) “exclusive choice of court agreement” means an agreement concluded by two or more parties that meets the requirements of paragraph c) and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one Contracting State or one or more specific courts of one Contracting State to the exclusion of the jurisdiction of any other courts;
- b) a choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise;
- c) an exclusive choice of court agreement must be concluded or documented –
  - i) in writing; or
  - i) by any other means of communication which renders information accessible so as to be usable for subsequent reference;
- d) an exclusive choice of court agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid.

## Article 4 Other definitions

(1) In this Convention, “judgment” means any decision on the merits given by a court, whatever it 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) For the purposes of this Convention, an entity or person other than a natural person shall be considered to be 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- JURISDICTION

### Article 5

#### Jurisdiction on the chosen court

(1) The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

(2) A court that has jurisdiction under paragraph 1 shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.

(3) The preceding paragraphs shall not affect rules-

- a)* on jurisdiction related to subject matter or to the value of the claim;
- b)* on the internal allocation of jurisdiction among the courts of a Contracting State.

However, where the chosen court has discretion as to whether to transfer a case, due consideration should be given to the choice of the parties.

### Article 6

#### Obligations of a court not chosen

A court of a Contracting State other than that of the chosen court shall suspend or dismiss proceedings to which an exclusive choice of court agreement applies unless-

- a )* the agreement is null and void under the law of the State of the chosen court;
- b )* a party lacked the capacity to conclude the agreement under the law of the State of the court seised;
- c)* giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of the State of the court seised;
- d)* for exceptional reasons beyond the control of the parties, the agreement cannot reasonably be performed; or
- e)* the chosen court has decided not to hear the case.



## Article 7

### Interim measures of protection

Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant, refusal or termination of interim measures of protection by a court of a Contracting State and does not affect whether or not a party may request or a court should grant, refuse or terminate such measures.

## CHAPTER III- RECOGNITION AND ENFORCEMENT

## Article 8

### Recognition and enforcement

(1) A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

(2) Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.

(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) Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition and enforcement of the judgment.

(5) This Article shall also apply to a judgment given by a court of a Contracting State pursuant to a transfer of the case from the chosen court in that Contracting State as permitted by Article 5, paragraph 3. However, where the chosen court had discretion as to whether to transfer the case to another court, recognition or enforcement of the judgment may be refused against a party who objected to the transfer in a timely manner in the State of origin.

## Article 9

### Refusal of recognition or enforcement

Recognition or enforcement may be refused if-

- a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;
- b) a party lacked the capacity to conclude the agreement under the law of the requested State;
- c) the document which instituted the proceedings or an equivalent document, including 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;
- d) the judgment was obtained by fraud in connection with a matter of procedure;
- e) 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;
- f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
- g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

#### Article 10

##### Preliminary questions

(1) Where a matter excluded under Article 2, paragraph 2, or under Article 21, arose as a preliminary question, the ruling on that question shall not be recognised or enforced under this Convention.

(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 excluded under Article 2, paragraph 2.

(3) However, in the case of a ruling on the validity of an intellectual property right other than copyright or a related right, recognition or enforcement of a judgment may be refused or postponed 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 under the law of which the intellectual property right arose; or
  - b)* proceedings concerning the validity of the intellectual property right are pending in that State.
- (4) 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 excluded pursuant to a declaration made by the requested State under Article 21.

## Article 11

### 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 12

### Judicial settlements (transactions judiciaires)

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State designated in an exclusive choice of court agreement has approved, or which have been concluded before that court in the course of proceedings, 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)* the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence;
  - c)* 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;

- d)* any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;
  - e)* 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, 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

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.

Article 15  
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.

CHAPTER IV- GENERAL CLAUSES

Article 16  
Transitional provisions

- (1) This Convention shall apply to exclusive choice of court agreements concluded after its entry into force for the State of the chosen court.
- (2) This Convention shall not apply to proceedings instituted before its entry into force for the State of the court seised.

## Article 17

### Contracts of insurance and reinsurance

(1) Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this Convention on the ground that the contract of insurance or reinsurance relates to a matter to which this Convention does not apply.

(2) Recognition and enforcement of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect of-

- a)* a matter to which this Convention does not apply; or
- b)* an award of damages to which Article 11 might apply.

## Article 18

### No legislation

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality, including an Apostille.

## Article 19

### Declarations limiting jurisdiction

A State may declare that its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if, except for the location of the chosen court, there is no connection between that State and the parties or the dispute.

## Article 20

### 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 chosen court, were connected only with the requested State.

## Article 21

### 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 an exclusive choice of court agreement designates the courts, or one or more specific courts, of the State that made the declaration.

#### Article 22

##### Reciprocal declarations on non-exclusive choice of court agreements

(1) A Contracting State may declare that its courts will recognise and enforce judgments given by courts of other Contracting States designated in a choice of court agreement concluded by two or more parties that meets the requirements of Article 3, paragraph *c*), and designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, a court or courts of one or more Contracting States (a non-exclusive choice of court agreement).

(2) Where recognition or enforcement of a judgment given in a Contracting State that has made such a declaration is sought in another Contracting State that has made such a declaration, the judgment shall be recognised and enforced under this Convention, if-

- a)* the court of origin was designated in a non-exclusive choice of court agreement;
- b)* there exists neither a judgment given by any other court before which proceedings could be brought in accordance with the non-exclusive choice of court agreement, nor a proceeding pending between the same parties in any other such court on the same cause of action; and
- c)* the court of origin was the court first seised.

#### Article 23

##### 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 24

##### 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 25

### 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 residence in a State shall be construed as referring, where appropriate, to 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 26

### Relationship with other legal 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, whether concluded before or after this Convention, in cases where none of the parties is resident in a Contracting State that is not a Party to the treaty.

(3) This Convention shall not affect the application by a Contracting State of a treaty that was concluded before this Convention entered into force for that Contracting State, if applying this Convention would be inconsistent with the obligations of that Contracting State to any non-

Contracting State. This paragraph shall also apply to treaties that revise or replace a treaty concluded before this Convention entered into force for that Contracting State, except to the extent that the revision or replacement creates new inconsistencies with this Convention.

(4) This Convention shall not affect the application by a Contracting State of a treaty, whether concluded before or after this Convention, 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 treaty. However, the judgment shall not be recognised or enforced to a lesser extent than under this Convention.

(5) This Convention shall not affect the application by a Contracting State of a treaty which, in relation to a specific matter, governs jurisdiction or the recognition or enforcement of judgments, even if concluded after this Convention and even if all States concerned are Parties to this Convention. This paragraph shall apply only if the Contracting State has made a declaration in respect of the treaty under this paragraph. In the case of such a declaration, other Contracting States shall not be obliged to apply this Convention to that specific matter to the extent of any inconsistency, where an exclusive choice of court agreement designates the courts, or one or more specific courts, of the Contracting State that made the declaration.

(6) 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-

- a) where none of the parties is resident in a Contracting State that is not a Member State of the Regional Economic Integration Organisation;
- b) as concerns the recognition or enforcement of judgments as between Member States of the Regional Economic Integration Organisation.

#### CHAPTER V- FINAL CLAUSES

##### Article 27

##### 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 28

##### 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 29

### 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 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 30 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 30

### 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 31**

#### **Entry into force**

(1) This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession referred to in Article 27.

(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 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 28, paragraph 1, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

### **Article 32**

#### **Declarations**

(1) Declarations referred to in Articles 19, 20, 21, 22 and 26 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 three months after the date on which the notification is received by the depositary.

(5) A declaration under Articles 19, 20, 21 and 26 shall not apply to exclusive choice of court agreements concluded before it takes effect.

### Article 33

## 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 34

#### 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 27, 29 and 30 of the following-

- a)* the signatures, ratifications, acceptances, approvals and accessions referred to in Articles 27, 29 and 30;
- b)* the date on which this Convention enters into force in accordance with Article 31;
- c)* the notifications, declarations, modifications and withdrawals of declarations referred to in Articles 19, 20, 21, 22, 26, 28, 29 and 30;
- d)* the denunciations referred to in Article 33.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on 30 June 2005, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Member States of the Hague Conference on Private International Law as of the date of its Twentieth Session and to each State which participated in that Session.

**SCHEDULE 7**

Section 35

AMENDMENT TO THE MAINTENANCE ORDERS  
(RECIPROCAL ENFORCEMENT) ACT.

*Paragraph (a) amends section 2.*

*Paragraph (b) amends section 4.*

*Paragraph (c) amends section 7.*

*Paragraph (d) amends section 9.*

*Paragraph (e) amends section 10.*

*Paragraph (f) amends sub-section 11(2).*

*Paragraph (g) amends sub-section 12(1).*

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**SCHEDULE 8**

Section 36

AMENDMENTS TO THE MAGISTRATES' COURT  
ACT.

*Paragraph (a) amends section 45(d).*

*Paragraph (b) inserts new section 45(e).*

*Paragraph (c) amends section 45.*

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**SCHEDULE 9**

Section 37

AMENDMENT TO THE JUDGMENTS (RECIPROCAL  
ENFORCEMENT) ACT.

*Paragraph (a) inserts a new definition of “court” in section 2.*

*Paragraph (b) replaces section 3.*

*Paragraph (c) replaces section 10.*

*Paragraph (d) replaces section 11 and inserts a new section 11A.*

## SCHEDULE 10

Section 38

**APPLICATION OF THE REGULATION****Interpretation.**

1.(1) In this Schedule—

“court”, without more, includes a tribunal;

“judgment” has the meaning given by Article 2 of the Regulation;

“prescribed” means prescribed by the Chief Justice in rules of court.

(2) In this Schedule, any reference to a numbered Article or Annex is a reference to the Article or Annex so numbered in the Regulation, and any reference to a sub-division of a numbered Article shall be construed accordingly.

(3) *Deleted*

**Enforcement of judgments other than maintenance orders (section 6).**

2.(1) Where a judgment is enforced under the Regulation, the reasonable costs or expenses of and incidental to its enforcement shall be recoverable as if they were sums recoverable under the judgment.

(2) A judgment to be enforced under the Regulation shall, for the purposes of its enforcement, be of the same force and effect, and the enforcing court shall have in relation to its enforcement the same powers, and proceedings for or with respect to its enforcement may be taken, as if the judgment had been originally given by the enforcing court.

(3) Sub-paragraph (2) is subject to Articles 41(2) and 46, to paragraph 5 and to any provision made by rules of court as to the manner in which and conditions subject to which a judgment declared enforceable under the Regulation may be enforced.

3. *Deleted*

4. *Deleted*

**Interest on judgments (section 9).**

5.(1) Subject to sub-paragraph (2), where a person applying for enforcement of a judgment under the Regulation shows—

- (a) that the judgment provides for the payment of a sum of money; and
- (b) that in accordance with the law of the Regulation State in which the judgment was given interest on that sum is recoverable under the judgment from a particular date or time,

the debt resulting from enforcement of the judgment is to carry interest at that rate and from that date or time.

(2) Costs or expenses recoverable by virtue of paragraph 2(1) shall carry interest as if they were the subject of an order for the payment of costs or expenses made by the enforcing court on the date of enforcement.

(3) *Deleted*

(4) Debts under judgments enforced under the Regulation shall carry interest only as provided by this paragraph.

6. *Deleted*

## **Proof and admissibility of judgments and related documents (section 11).**

7.(1) For the purposes of the Regulation—

- (a) a document, duly authenticated, which purports to be a copy of a judgment given by a court of a Regulation State other than Gibraltar shall without further proof be deemed to be a true copy, unless the contrary is shown; and
- (b) a certificate obtained in accordance with Article 53 and Annex I shall be evidence that the judgment is enforceable in the Regulation State of origin.

(2) A document purporting to be a copy of a judgment given by any such court as is mentioned in sub-paragraph (1)(a) is duly authenticated for the purposes of this paragraph if it purports—

- (a) to bear the seal of that court; or
- (b) to be certified by any person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court.

(3) Nothing in this paragraph shall prejudice the admission in evidence of any document which is admissible apart from this paragraph.

**Domicile of individuals (section 24).**

8.(1) Subject to Article 62 (which contains provisions for determining whether a party is domiciled in a Regulation State), the following provisions of this paragraph determine, for the purposes of the Regulation, whether an individual is domiciled in Gibraltar or in a state other than a Regulation State.

(2) An individual is domiciled in Gibraltar if and only if–

- (a) he is resident in Gibraltar; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with Gibraltar.

(3) In the case of an individual who–

- (a) is resident in Gibraltar; and
- (b) has been so resident for the last three months or more,

the requirements of sub-paragraph (2)(b) shall be presumed to be fulfilled unless the contrary is proved.

(4) An individual is domiciled in a state other than a Regulation State if and only if–

- (a) he is resident in that state; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with that state.

**Seat of company, or other legal person or association for purposes of Article 24(2) (section 26).**

9.(1) The following provisions of this paragraph determine where a company, legal person or association has its seat for the purposes of Article 22(2) (which confers exclusive jurisdiction over proceedings relating to the formation or dissolution of such bodies, or to the decisions of their organs).

(2) A company, legal person or association has its seat in Gibraltar if and only if–

- (a) it was incorporated or formed under the law of Gibraltar; or
- (b) its central management and control is exercised in Gibraltar.

(3) Subject to sub-paragraph (4), a company, legal person or association has its seat in a Regulation State other than Gibraltar if and only if–

- (a) it was incorporated or formed under the law of that state; or
- (b) its central management and control is exercised in that state.

(4) A company, legal person or association shall not be regarded as having its seat in a Regulation State other than Gibraltar if–



- (a) it has its seat in Gibraltar by virtue of sub-paragraph (2)(a); or
- (b) it is shown that the courts of that other state would not regard it for the purposes of Article 22(2) as having its seat there.

**Persons deemed to be domiciled in Gibraltar for certain purposes (section 27).**

10.(1) This paragraph applies to—

- (a) proceedings within Section 3 of Chapter II of the Regulation (insurance contracts);
- (b) proceedings within Section 4 of Chapter II of the Regulation (consumer contracts); and
- (c) proceedings within Section 5 of Chapter II of the Regulation (employment contracts).

(2) A person who, for the purposes of proceedings to which this paragraph applies arising out of the operations of a branch, agency or other establishment in Gibraltar, is deemed for the purposes of the Regulation to be domiciled in Gibraltar by virtue of—

- (a) Article 11(2) (insurers); or
- (b) Article 17(2) (suppliers of goods, services or credit to consumers); or
- (c) Article 20(2) (employers),

shall, for the purposes of those proceedings, be treated as so domiciled.

**Domicile of trusts (section 28).**

11.(1) The following provisions of this paragraph determine for the purposes of the Regulation where a trust is domiciled.

(2) A trust is domiciled in Gibraltar if and only if the system of law of Gibraltar is the system of law with which the trust has its closest and most real connection.

## PART II

### AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

**Interpretation.**

12. In this Part, references to authentic instruments and court settlements are references to those instruments and settlements referred to in Chapter IV of the Regulation.

**Application to authentic instruments and court settlements.**

13.(1) Subject to the modifications specified in paragraph (2), paragraphs 1, 2 and 5 shall apply, as appropriate to authentic instruments and court settlements as if they were judgments.

(2) In the application of paragraph 2(2) to authentic instruments and court settlements, for the words “as if the judgment had been originally given” there shall be substituted “as if it was a judgment which had been originally given”.

(4) Paragraph 7 shall apply to authentic instruments as if they were judgments and in its application for subparagraph (1)(b) there shall be substituted the following—

“(b) a certificate obtained in accordance with Articles 58 and 60 and Annex II shall be evidence that the authentic instrument is enforceable in the Regulation State of origin.”.

(5) Paragraph 7(1) shall apply to court settlements as if they were judgments and in its application for “Article 53 and Annex I” there shall be substituted “Article 60 and Annex II”.

**Rules of Court.**

14. Section 32 (matters for which rules of court may provide) will apply to authentic instruments and court settlements as if they were judgments to which the Regulation applies.

**SCHEDULE 11**

Section 38A

**APPLICATION OF REGULATION 2201/2003  
Jurisdiction and the recognition and enforcement of judgments in  
matrimonial and parental responsibility matters.**

**Interpretation.**

1. In this Schedule, words defined in Regulation 2201/2003 have the same meaning.

**Central authority for Gibraltar.**

2. The Minister responsible for justice shall be the central authority in Gibraltar for the purposes of Article 53 of Regulation 2201/2003.

**Recognition and enforcement of judgments.**

3.(1) The Supreme Court—

- (a) may, for the purposes of Chapter III of Regulation 2201/2003, make an order that a judgment of a court in a Regulation State is recognised, or not recognised, in Gibraltar;
- (b) may, for the purposes of Article 28(1) of Regulation 2201/2003, make an order declaring that a judgment on the exercise of parental responsibility of a court in a Regulation State is enforceable in Gibraltar;
- (c) shall be the competent court for the purposes of Article 39 of Regulation 2201/2003.

(2) Where a judgment has been recognised or declared enforceable under subsection (1)(a) or (1)(b), any court in Gibraltar shall have the same powers for the purpose of enforcing the judgment as if the judgment had been made by the Supreme Court and, subject to Regulation 2201/2003, proceedings for or with respect to enforcement may be taken accordingly.

(3) For the purposes of Article 37(1)(a) of Regulation 2201/2003 a copy of a judgment shall be considered authentic unless the contrary is shown.

**Rules of Court.**

4. The Chief Justice may make rules of court to give effect to this Schedule, in particular in relation to the form and manner in which judgments may be recognised, and applications under Regulation 2201/2003 are made.

