

รายการอ้างอิง



ภาษาไทย

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ศูนย์วิทยทรัพยากร
 จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ก.

ประมวลกฎหมายวิธีพิจารณาความแพ่ง แก้ไขเพิ่มเติม พ.ศ. 2535

ศูนย์วิทยพัชร์พยากร
จุฬาลงกรณ์มหาวิทยาลัย

ศาล : เขตอำนาจศาล

ครองสิทธิของคู่ความในระหว่างการพิจารณา หรือเพื่อบังคับตามคำพิพากษา
หรือคำสั่ง

ลักษณะ ๒

ศาล

หมวด ๑

เขตอำนาจศาล

มาตรา ๒ ห้ามมิให้เสนอคำฟ้องต่อศาลใด เว้นแต่

(๑) เมื่อได้พิจารณาถึงสภาพแห่งคำฟ้องและชั้นของศาลแล้ว ปรากฏว่าศาลนั้นมีอำนาจที่จะพิจารณาพิพากษาคดีนั้นได้ตามบทบัญญัติแห่งกฎหมายว่าด้วยพระธรรมนูญศาลยุติธรรม และ

(๒) เมื่อได้พิจารณาถึงคำฟ้องแล้ว ปรากฏว่าคดีนั้นอยู่ในเขตศาลนั้นตามบทบัญญัติแห่งประมวลกฎหมายนี้ว่าด้วยศาลที่จะรับคำฟ้อง และตามบทบัญญัติแห่งกฎหมายที่กำหนดเขตศาลด้วย

มาตรา ๓* เพื่อประโยชน์ในการเสนอคำฟ้อง

(๑) ในกรณีที่มีมูลคดีเกิดขึ้นในเรือไทยหรืออากาศยานไทยที่อยู่นอก

* ความเดิมถูกยกเลิก และให้ใช้ความที่พิมพ์ไว้แทน โดยมาตรา ๓ แห่งพร.บ. แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความแพ่ง (ฉบับที่ ๑๒) พ.ศ. ๒๕๓๔

ราชอาณาจักร ให้ศาลแพ่งเป็นศาลที่มีเขตอำนาจ

(๒) ในกรณีที่จำเลยไม่มีภูมิลำเนาอยู่ในราชอาณาจักร

(ก) ถ้าจำเลยเคยมีภูมิลำเนาอยู่ ณ ที่ใดในราชอาณาจักรภายในกำหนดสองปีก่อนวันที่มีการเสนอคำฟ้อง ให้ถือว่าที่นั้นเป็นภูมิลำเนาของจำเลย

(ข) ถ้าจำเลยประกอบหรือเคยประกอบกิจการทั้งหมดหรือแต่บางส่วนในราชอาณาจักรไม่ว่าโดยตนเองหรือตัวแทน หรือโดยมีบุคคลหนึ่งบุคคลใดเป็นผู้ติดต่อในการประกอบกิจการนั้นในราชอาณาจักร ให้ถือว่าสถานที่ที่ใช้หรือเคยใช้ประกอบกิจการหรือติดต่อดังกล่าว หรือสถานที่อันเป็นที่ตั้งของตัวแทนหรือของผู้ติดต่อในวันที่มีการเสนอคำฟ้องหรือภายในกำหนดสองปีก่อนนั้น เป็นภูมิลำเนาของจำเลย

มาตรา ๔* เว้นแต่จะมีบทบัญญัติเป็นอย่างอื่น

(๑) คำฟ้อง ให้เสนอต่อศาลที่จำเลยมีภูมิลำเนาอยู่ในเขตศาล หรือต่อศาลที่มูลคดีเกิดขึ้นในเขตศาลไม่ว่าจำเลยจะมีภูมิลำเนาอยู่ในราชอาณาจักรหรือไม่

(๒) คำร้องขอ ให้เสนอต่อศาลที่มูลคดีเกิดขึ้นในเขตศาล หรือต่อศาลที่ผู้ร้องมีภูมิลำเนาอยู่ในเขตศาล

*ความเดิมถูกยกเลิก และให้ใช้ความที่พิมพ์ไว้แทน โดยมาตรา ๓ แห่งพ.ร.บ. แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความแพ่ง (ฉบับที่ ๑๒) พ.ศ. ๒๕๓๔

๒๔ เขตอำนาจศาล

มาตรา ๔ ทวิ* คำฟ้องเกี่ยวด้วยอสังหาริมทรัพย์ หรือสิทธิหรือประโยชน์อันเกี่ยวด้วยอสังหาริมทรัพย์ ให้เสนอต่อศาลที่อสังหาริมทรัพย์นั้นตั้งอยู่ในเขตศาล ไม่ว่าจำเลยจะมีภูมิลำเนาอยู่ในราชอาณาจักรหรือไม่ หรือต่อศาลที่จำเลยมีภูมิลำเนาอยู่ในเขตศาล

มาตรา ๔ ตรี* คำฟ้องอื่นนอกจากที่บัญญัติไว้ในมาตรา ๔ ทวิ ซึ่งจำเลยมิได้มีภูมิลำเนาอยู่ในราชอาณาจักรและมูลคดีมิได้เกิดขึ้นในราชอาณาจักร ถ้าโจทก์เป็นผู้มีสัญชาติไทยหรือมีภูมิลำเนาอยู่ในราชอาณาจักร ให้เสนอต่อศาลแพ่งหรือต่อศาลที่โจทก์มีภูมิลำเนาอยู่ในเขตศาล

คำฟ้องตามวรรคหนึ่ง ถ้าจำเลยมีทรัพย์สินที่อาจถูกบังคับคดีได้อยู่ในราชอาณาจักร ไม่ว่าจะเป็นการชั่วคราวหรือถาวร โจทก์จะเสนอคำฟ้องต่อศาลที่ทรัพย์สินนั้นอยู่ในเขตศาลก็ได้

มาตรา ๔ จัตวา* คำร้องขอแต่งตั้งผู้จัดการมรดก ให้เสนอต่อศาลที่เจ้ามรดกมีภูมิลำเนาอยู่ในเขตศาลในขณะที่ถึงแก่ความตาย

ในกรณีที่เจ้ามรดกไม่มีภูมิลำเนาอยู่ในราชอาณาจักร ให้เสนอต่อศาลที่ทรัพย์มรดกอยู่ในเขตศาล

มาตรา ๔ เบญจ* คำร้องขอเพิกถอนมติของที่ประชุมหรือที่ประชุมใหญ่ของนิติบุคคล คำร้องขอเลิกนิติบุคคล คำร้องขอตั้งหรือถอนผู้ชำระ

* มาตรา ๔ ทวิ มาตรา ๔ ตรี มาตรา ๔ จัตวา และมาตรา ๔ เบญจ เพิ่มเติมโดยมาตรา ๔ แห่งพร.บ.แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความแพ่ง (ฉบับที่ ๑๒) พ.ศ. ๒๕๓๔

บัญชีของนิติบุคคล หรือคำร้องขออื่นใดเกี่ยวกับนิติบุคคล ให้เสนอต่อศาลที่นิติบุคคลนั้นมีสำนักงานแห่งใหญ่อยู่ในเขตศาล

มาตรา ๔ ฉ* คำร้องขอเกี่ยวกับทรัพย์สินที่อยู่ในราชอาณาจักรก็ดี คำร้องขอที่หากศาลมีคำสั่งตามคำร้องขอนั้นจะเป็นผลให้ต้องจัดการหรือเลิกจัดการทรัพย์สินที่อยู่ในราชอาณาจักรก็ดี ซึ่งมูลคดีมิได้เกิดขึ้นในราชอาณาจักรและผู้ร้องไม่มีภูมิลำเนาอยู่ในราชอาณาจักร ให้เสนอต่อศาลที่ทรัพย์สินดังกล่าวอยู่ในเขตศาล

มาตรา ๕** คำฟ้องหรือคำร้องขอซึ่งอาจเสนอต่อศาลได้สองศาลหรือกว่านั้น ไม่ว่าจะเป็เพราะภูมิลำเนาของบุคคลก็ดี เพราะที่ตั้งของทรัพย์สินก็ดี เพราะสถานที่ที่เกิดมูลคดีก็ดี หรือเพราะมีข้อหาหลายข้อคดี ถ้ามูลความแห่งคดีเกี่ยวข้องกัน โจทก์หรือผู้ร้องจะเสนอคำฟ้องหรือคำร้องขอต่อศาลใดศาลหนึ่งเช่นว่านั้นก็ไ้

มาตรา ๖** ก่อนยื่นคำให้การ จำเลยชอบที่จะยื่นคำร้องต่อศาลที่โจทก์ได้ยื่นคำฟ้องไว้ขอให้โอนคดีไปยังศาลอื่นที่มีเขตอำนาจได้ คำร้องนั้นจำเลยต้องแสดงเหตุที่ยกขึ้นอ้างอิงว่าการพิจารณาคดีต่อไปในศาลนั้นจะไม่สะดวก หรือจำเลยอาจไม่ได้รับความยุติธรรม เมื่อศาลเห็นสมควร ศาล

* มาตรา ๔ ฉ. เพิ่มเติมโดยมาตรา ๔ แห่งพ.ร.บ.แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความแพ่ง (ฉบับที่ ๑๒) พ.ศ. ๒๕๓๔

** ความเดิมถูกยกเลิก และให้ใช้ความที่พิมพ์ไว้แทนโดย มาตรา ๕ แห่งพ.ร.บ.แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความแพ่ง (ฉบับที่ ๑๒) พ.ศ. ๒๕๓๔

๒๖ เขตอำนาจศาล

จะมีคำสั่งอนุญาตตามคำร้องนั้นก็ได้

ห้ามมิให้ศาลออกคำสั่งอนุญาตตามวรรคหนึ่ง เว้นแต่ศาลที่จะรับโอนคดีไปนั้นได้ยินยอมเสียก่อน ถ้าศาลที่จะรับโอนคดีไม่ยินยอม ก็ให้ศาลที่จะโอนคดีนั้นส่งเรื่องให้อธิบดีผู้พิพากษาศาลอุทธรณ์ชี้ขาด คำสั่งของอธิบดีผู้พิพากษาศาลอุทธรณ์ให้เป็นที่สุด

มาตรา ๗* บทบัญญัติในมาตรา ๔ มาตรา ๕ ทวิ มาตรา ๕ ตริ มาตรา ๕ จัตวา มาตรา ๕ เบญจ มาตรา ๕ ฉ มาตรา ๕ และมาตรา ๖ ต้องอยู่ภายใต้บังคับแห่งบทบัญญัติดังต่อไปนี้

(๑) คำฟ้องหรือคำร้องขอที่เสนอภายหลังเกี่ยวเนื่องกับคดีที่ค้างพิจารณาอยู่ในศาลใด ให้เสนอต่อศาลนั้น

(๒) คำฟ้องหรือคำร้องขอที่เสนอเกี่ยวเนื่องกับการบังคับคดีตามคำพิพากษา หรือคำสั่งของศาลซึ่งคำฟ้องหรือคำร้องขอนั้นจำต้องมีคำวินิจฉัยของศาลก่อนที่การบังคับคดีจะได้ดำเนินไปได้โดยครบถ้วนและถูกต้องนั้น ให้เสนอต่อศาลที่มีอำนาจในการบังคับคดีตามมาตรา ๓๐๒

(๓) คำร้องตามมาตรา ๑๐๑ ถ้าได้เสนอคำฟ้องหรือคำร้องขอต่อศาลใดแล้วให้เสนอต่อศาลนั้น ในกรณีที่ยังไม่ได้เสนอคำฟ้องหรือคำร้องขอต่อศาลใด ถ้าพยานหลักฐานซึ่งจะเรียกมาสืบหรือบุคคลหรือทรัพย์หรือสถานที่ที่จะต้องตรวจอยู่ในเขตศาลใด ให้เสนอต่อศาลนั้น

* ความเดิมถูกยกเลิก และให้ใช้ความที่พิมพ์ไว้แทนโดย มาตรา ๕ แห่งพ.ร.บ. แก้ไขเพิ่มเติมประมวลกฎหมายวิธีพิจารณาความแพ่ง (ฉบับที่ ๑๒) พ.ศ. ๒๕๓๔

(๔) คำร้องที่เสนอให้ศาลถอนคืนหรือเปลี่ยนแปลงคำสั่งหรือการอนุญาตที่ศาลได้ให้ไว้ก็ดี คำร้องที่เสนอให้ศาลถอดถอนบุคคลใดจากฐานะที่ศาลได้แต่งตั้งไว้ก็ดี คำร้องที่เสนอให้ศาลมีคำสั่งใดที่เกี่ยวกับการถอนคืนหรือเปลี่ยนแปลงคำสั่งหรือการอนุญาต หรือที่เกี่ยวกับการแต่งตั้งเช่นว่านั้นก็ดี คำร้องขอหรือคำร้องอื่นใดที่เสนอเกี่ยวเนื่องกับคดีที่ศาลได้มีคำพิพากษาหรือคำสั่งไปแล้วก็ดี ให้เสนอต่อศาลในคดีที่ได้มีคำสั่ง การอนุญาตการแต่งตั้ง หรือคำพิพากษานั้น

มาตรา ๘ ถ้าคดีสองเรื่องซึ่งมีประเด็นอย่างเดียวกัน หรือเกี่ยวเนื่องใกล้เคียงกัน อยู่ในระหว่างพิจารณาของศาลชั้นต้นที่มีเขตอำนาจสองศาลต่างกัน และศาลทั้งสองนั้นได้ยกคำร้องทั้งหลายที่ได้ยื่นต่อศาล ขอให้คดีทั้งสองได้พิจารณาพิพากษารวมในศาลเดียวกันนั้นเสีย ปรากฏที่ศาลใดศาลหนึ่งยังมีคำพิพากษาคดีนั้น ๆ คู่ความฝ่ายใดฝ่ายหนึ่งจะยื่นคำขอ โดยทำเป็นคำร้องต่ออธิบดีผู้พิพากษาศาลอุทธรณ์ เพื่อขอให้มีคำสั่งให้ศาลใดศาลหนึ่งจำหน่ายคดี ซึ่งอยู่ในระหว่างพิจารณานั้นออกเสียจากสารบบความ หรือให้โอนคดีไปยังอีกศาลหนึ่งก็ได้แล้วแต่กรณี

คำสั่งใด ๆ ของอธิบดีผู้พิพากษาศาลอุทธรณ์เช่นว่านี้ให้เป็นที่สุด

มาตรา ๙ ในกรณีดังที่กล่าวในมาตราก่อนนั้น ถ้าศาลใดศาลหนึ่งได้พิพากษาคดีแล้ว และได้มีการยื่นอุทธรณ์คัดค้านคำพิพากษานั้น คู่ความฝ่ายใดฝ่ายหนึ่งอาจยื่นคำขอโดยทำเป็นคำร้องต่อศาลอุทธรณ์ ขอให้ มีคำสั่งให้งดการพิจารณาคดีชั้นอุทธรณ์นั้นไว้ก่อนจนกว่าอีกศาลหนึ่งจะได้พิพากษาคดีอีกเรื่องหนึ่งเสร็จแล้วก็ได้ และถ้าได้มีการอุทธรณ์คดีเรื่องหลัง

๒๘ การคัดค้านผู้พิพากษา

นี้ ก็ให้ศาลอุทธรณ์รวมวินิจฉัยคดีทั้งสองนั้นโดยคำพิพากษาเดียวกัน ถ้าคดีเรื่องหลังนั้นไม่มีอุทธรณ์ ให้บังคับตามบทบัญญัติแห่งมาตรา ๑๕๖


มาตรา ๑๐ ถ้าไม่อาจดำเนินกระบวนการพิจารณาในศาลชั้นต้นที่มีเขตศาลเหนือคดีนั้นได้โดยเหตุสุดวิสัย คู่ความฝ่ายที่เสียหายหรืออาจเสียหายเพราะการนั้น จะยื่นคำขอฝ่ายเดียวโดยทำเป็นคำร้องต่อศาลชั้นต้น ซึ่งตนมีภูมิลำเนาหรืออยู่ในเขตศาลในขณะนั้นก็ได้ และให้ศาลนั้นมีอำนาจทำคำสั่งอย่างใดอย่างหนึ่งตามที่เห็นสมควรเพื่อประโยชน์แห่งความยุติธรรม

หมวด ๒

การคัดค้านผู้พิพากษา

มาตรา ๑๑ เมื่อคดีถึงศาล ผู้พิพากษาคคนหนึ่งคนใดในศาลนั้น อาจถูกคัดค้านได้ ในเหตุใดเหตุหนึ่งดังต่อไปนี้

- (๑) ถ้าผู้พิพากษานั้นมีผลประโยชน์ได้เสียเกี่ยวข้องกับคดีนั้น
- (๒) ถ้าเป็นญาติเกี่ยวข้องกับคู่ความฝ่ายใดฝ่ายหนึ่ง คือว่าเป็นบุพการี หรือผู้สืบสันดานไม่ว่าชั้นใด ๆ หรือเป็นพี่น้องหรือลูกพี่ลูกน้องนับได้เพียงภายในสามชั้น หรือเป็นญาติเกี่ยวพันทางแต่งงานนับได้เพียงสองชั้น
- (๓) ถ้าเป็นผู้ที่ได้ถูกอ้างเป็นพยาน โดยที่ารู้ได้เห็นเหตุการณ์ หรือโดยเป็นผู้เชี่ยวชาญมีความรู้เป็นพิเศษเกี่ยวข้องกับคดีนั้น
- (๔) ถ้าได้เป็นหรือเป็นผู้แทนโดยชอบธรรมหรือผู้แทน หรือได้เป็นทนายความของคู่ความฝ่ายใดฝ่ายหนึ่งมาแล้ว




ภาคผนวก ข.

ประมวลกฎหมายวิธีพิจารณาความแพ่ง พ.ศ. 2477

THE CIVIL PROCEDURAL CODE B.E. 2477

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ข.

ประมวลกฎหมายวิธีพิจารณาความแพ่ง พ.ศ. 2477

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ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

๔ | เขตอำนาจศาล

ใช้อยู่ในอันที่จะปฏิบัติตามวิธีการที่บัญญัติไว้ในภาค ๔ แห่งประมวลกฎหมายนี้ เพื่อคุ้มครองสิทธิของคู่ความในระหว่างการพิจารณาหรือเพื่อบังคับตามคำพิพากษาหรือคำสั่ง

ลักษณะ ๒

ศาล

หมวด ๑

เขตอำนาจศาล

มาตรา ๒ ห้ามมิให้เสนอคำฟ้องต่อศาลใด เว้นแต่

(๑) เมื่อได้พิจารณาถึงสภาพแห่งคำฟ้องและชั้นของศาลแล้ว ปรากฏว่า ศาลนั้นมีอำนาจที่จะพิจารณาพิพากษาคดีนั้นได้ตามบทบัญญัติแห่งกฎหมายว่าด้วยพระธรรมนูญศาลยุติธรรม และ

(๒) เมื่อได้พิจารณาถึงคำฟ้องแล้ว ปรากฏว่าคดีนั้นอยู่ในเขตศาลนั้นตามบทบัญญัติแห่งประมวลกฎหมายนี้ ว่าด้วยศาลที่จะรับคำฟ้อง และตามบทบัญญัติแห่งกฎหมายที่กำหนดเขตศาลด้วย

มาตรา ๓ ในกรณีที่บทบัญญัติแห่งหมวดนี้มีได้บังคับถึงการยื่นคำฟ้องในระหว่างคนสัญชาติไทยต่อคนสัญชาติไทย คำฟ้องเช่นว่านี้จะยื่นต่อศาลชั้นต้นในเขตจังหวัดพระนครและธนบุรีก็ได้

TERRITORIAL JURISDICTION AND COMPETENCY OF COURTS | 4

at the time to carry out any measures provided by Division IV of this Code for the protection of the rights of any party during trial or for the enforcement of a judgment or order.

TITLE II COURTS

CHAPTER I TERRITORIAL JURISDICTION AND COMPETENCY OF COURTS

Section 2.— No plaint may be submitted to a Court unless:

1) having regard to the nature of the plaint and the grade of the Court, it appears that such Court is competent to try and adjudicate the case under the provisions of law governing the organization of Courts of Justice, and

2) having regard to the plaint, it appears that the case is within the territorial jurisdiction of such Court under the provisions of this Code governing venue and also under the provisions of law fixing the limits of the territorial jurisdiction of Courts.

Section 3.— In the case where the provisions of this Chapter do not apply to the entry of any plaint by a Thai national against a Thai national, such plaint may be entered in the Courts of First Instance for Changvads Phra Nagor and Dhonburi.

๕ | เขตอำนาจศาล

มาตรา ๔ เว้นแต่จะได้มีกฎหมายบัญญัติไว้เป็นอย่างอื่น การยื่นคำฟ้องนั้น ต้องอยู่ในบังคับแห่งบทบัญญัติดังต่อไปนี้

(๑) คำฟ้องเกี่ยวกับข้อสังหาริมทรัพย์หรือสังหาริมทรัพย์ หรือสิทธิ หรือประโยชน์ใด ๆ อันเกี่ยวกับทรัพย์เหล่านั้น ให้เสนอต่อศาลที่ทรัพย์เหล่านั้นตั้งอยู่ในเขตศาล แต่ถ้าโจทก์มีความประสงค์ที่จะยื่นคำฟ้องต่อศาลที่จำเลยมีภูมิลำเนาอยู่ในเขตศาลนั้น เมื่อโจทก์ยื่นคำขอโดยทำเป็นคำร้องแสดงให้เห็นว่า การพิจารณาคดีในศาลนั้น ๆ จะเป็นการสะดวก ศาลจะใช้ดุลพินิจอนุญาตให้โจทก์ยื่นคำฟ้องตามที่ขอนั้นก็ได้

(๒) คำฟ้องอื่น ๆ นอกจากนั้น ให้เสนอต่อศาลที่จำเลยมีภูมิลำเนาอยู่ในเขตศาล แต่ถ้าโจทก์มีความประสงค์ที่จะยื่นคำฟ้องต่อศาลที่มูลคดีเกิดขึ้นในเขตศาลนั้น หรือในคดีที่ไม่มีข้อพิพาท ถ้าโจทก์มีความประสงค์ที่จะยื่นคำฟ้องต่อศาลที่โจทก์มีภูมิลำเนาอยู่ในเขตศาลนั้น เมื่อโจทก์ยื่นคำขอโดยทำเป็นคำร้องแสดงให้เห็นว่า การพิจารณาคดีในศาลนั้น ๆ จะเป็นการสะดวก ศาลจะใช้ดุลพินิจอนุญาตให้โจทก์ยื่นคำฟ้องตามที่ขอนั้นก็ได้

(๓) ในกรณีที่เกี่ยวกับหนี้เหนือบุคคล ซึ่งมีได้ตกอยู่ในบทบัญญัติแห่งหมวดนี้ ระหว่างเจ้าหนี้ซึ่งมีภูมิลำเนาอยู่ในประเทศสยามและลูกหนี้ซึ่งมิได้มีภูมิลำเนาในประเทศสยาม หากเข้ามาในประเทศสยามชั่วคราวนั้น ไม่ว่าจะเกิดมูลคดีในประเทศใด หรือมูลคดีจะเป็นประการใดก็ตาม เจ้าหนี้จะยื่นคำฟ้องขอให้บังคับตาม

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Section 4.— Unless otherwise provided by law, the entry of a plaint shall be governed by the following provisions:

1) all plaints concerning immovable or movable property or any right or interest concerning such property shall be submitted to the Court within the territorial jurisdiction of which the property is situated, provided that, if a plaintiff desires to file a plaint with the Court within the territorial jurisdiction of which the defendant is domiciled, the Court, upon the plaintiff filing an application by motion showing that the trial of the case will be facilitated thereby, may at its discretion grant permission to file the plaint accordingly;

2) all other plaints shall be submitted to the Court within the territorial jurisdiction of which the defendant is domiciled, provided that, if a plaintiff desires to file a plaint with the Court within the territorial jurisdiction of which the cause of action arose, or, in non-contentious cases, within which the plaintiff is domiciled, the Court, upon the plaintiff filing an application by motion showing that the trial of the case will be facilitated thereby, may at its discretion grant permission to file the plaint accordingly;

3) in a case relating to an obligation binding on a person, and not being governed by the provisions of this Chapter, whatever the cause of action or in whatever country it arose, as between a creditor domiciled in Thailand and a debtor not domiciled but coming temporarily into Thailand, the creditor may file a plaint for the enforcement of his right under such obligation with the Court within the territorial jurisdiction of

๖ | เขตอำนาจศาล

สิทธิเช่นว่านั้นในศาลซึ่งตนมีภูมิลำเนาอยู่ในเขตศาลนั้น หรือในศาลที่พบตัวลูกหนี้ในเขตศาลนั้นก็ได้อีก แต่ศาลจะดำเนินคดีต่อไปได้ต่อเมื่อได้ส่งหมายเรียกให้แก่ลูกหนี้ในประเทศสยามแล้ว

มาตรา ๕ ถ้าทรัพย์สินตามที่ระบุไว้ในมาตรา ๔ (๑) ตั้งอยู่ในเขตศาลของศาลสองศาลหรือกว่านั้นขึ้นไป โจทก์จะเสนอคำฟ้องต่อศาลใดศาลหนึ่งเช่นว่านั้นก็ได้อีก

ถ้าคดีตั้งระบุไว้ในมาตรา ๔ (๒) นั้น เป็นคดีที่ฟ้องจำเลยรวมกันหลายคน ซึ่งมีภูมิลำเนาอยู่ในเขตศาลของศาลสองศาลหรือกว่านั้นขึ้นไป และมูลความแห่งคดีไม่อาจแบ่งแยกจากกันได้ โจทก์จะเสนอคำฟ้องจำเลยเหล่านั้นต่อศาลใดศาลหนึ่งเช่นว่านั้นก็ได้อีก

มาตรา ๖ ก่อนยื่นคำให้การ จำเลยชอบที่จะยื่นคำขอโดยทำเป็นคำร้องต่อศาลที่โจทก์ได้ยื่นคำฟ้องไว้ขอให้โอนคดีไปยังศาลอื่นที่มีเขตอำนาจได้ คำร้องนั้นจำเลยต้องจัดแจ้งเหตุที่ยกขึ้นอ้างอิงเมื่อศาลเห็นว่าการพิจารณาคดีต่อไปในศาลนั้น คู่ความฝ่ายใดฝ่ายหนึ่งจักไม่ได้รับความยุติธรรม ศาลจะมีคำสั่งอนุญาตตามคำขอนั้นก็ได้

แต่ห้ามมิให้ศาลออกคำสั่งเช่นว่านั้น เว้นแต่ศาลที่จะรับโอนคดีไปนั้นได้ยินยอมเสียก่อน ถ้าศาลที่จะรับโอนคดีไม่ยินยอม ก็ให้ศาลที่จะโอนคดีนั้นส่งเรื่องให้อธิบดีผู้พิพากษาศาลอุทธรณ์ ซึ่งขาดคำสั่งของอธิบดีผู้พิพากษาศาลอุทธรณ์ให้เป็นที่ยุติ

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which he is domiciled or with the Court within the territorial jurisdiction of which the debtor is found; but the Court may proceed with the case only when such debtor has been served in Thailand with the Court's summons to appear.

Section 5.— If any property as specified in Section 4 (1) is situated within the territorial jurisdiction of two or more Courts, the plaintiff may submit his plaint to any one of such Courts.

If a case as specified in Section 4 (2) is one entered against several joint-defendant domiciled within the territorial jurisdiction of two or more Courts and the subject-matter of the case is indivisible, the plaintiff may submit his plaint against all such joint-defendants to any one of such Courts.

Section 6.— A defendant shall be entitled, before filing his answer, to apply by motion to the Court, in which the plaint has been filed by the plaintiff, for the case to be transferred to another Court having territorial jurisdiction and competency over it, provided that such motion shall specify the reasons relied on by the defendant. If the Court is of opinion that further trial of the case in that Court would cause an injustice to any party, it may issue an order granting such application.

Provided, however, that no such order may be issued except with the previous consent of the Court to which the case is to be transferred. If the latter Court refuses its consent, the former Court may refer the matter to the Chief Judge of the Appeal Court, whose order shall be final.

๗ | เขตอำนาจศาล

มาตรา ๗ บทบัญญัติในมาตราก่อนนั้น ต้องอยู่ภายในข้อบังคับต่อไปนี้

(๑) บรรดาคำฟ้องที่เสนอภายหลังเกี่ยวเนื่องกับคดีที่ค้างพิจารณาอยู่ในศาลใด ให้เสนอต่อศาลนั้น

(๒) บรรดาคำฟ้องและคำขอที่เสนอเกี่ยวเนื่องกับการบังคับคดีตามคำพิพากษาหรือคำสั่งของศาล ซึ่งบรรดาคำฟ้องหรือคำขอนั้น จำต้องมีคำวินิจฉัยของศาลก่อนที่การบังคับคดีจะได้ดำเนินไปได้โดยครบถ้วนและถูกต้องนั้น ให้เสนอต่อศาลที่ระบุไว้ในมาตรา ๓๐๒

(๓) คำร้องที่ยื่นตามมาตรา ๑๐๑ เพื่อรักษาไว้ซึ่งพยานหลักฐานอันเกี่ยวกับคดีที่ค้างพิจารณาอยู่ในศาลนั้น ให้ยื่นต่อศาลที่ทำการพิจารณา ถ้าไม่มีคดีอยู่ในระหว่างพิจารณา พยานผู้ซึ่งจะเรียกมาสืบ หรือบุคคล หรือทรัพย์สินหรือสถานที่ซึ่งจะต้องตรวจนั้น อยู่ในเขตศาลใด ก็ให้ยื่นต่อศาลนั้น

(๔) ถ้าได้มีการตกลงกันไว้เป็นหนังสือว่าคู่สัญญาได้ยินยอมกันว่า บรรดาข้อพิพาทที่ได้เกิดขึ้นแล้วก็ดี หรือข้อพิพาทที่อาจจะเกิดขึ้นจากข้อสัญญาก็ดี ให้เสนอต่อศาลชั้นต้นศาลใดศาลหนึ่งตามที่ได้ระบุไว้ ซึ่งไม่มีหรืออาจไม่มีเขตศาลเหนือคดีนั้นตามบทบัญญัติแห่งประมวลกฎหมาย ว่าด้วยศาลที่จะรับคำฟ้อง ข้อตกลงเช่นนั้น ให้เป็นอันผูกพันกันได้ แต่ศาลที่ได้ตกลงกันไว้นั้น จะต้องเป็นศาลที่คู่ความฝ่ายใดฝ่ายหนึ่งมีภูมิลำเนาอยู่ในเขตศาลนั้น หรือมุลคดี

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Section 7.— The provisions of the four foregoing Sections shall be subject to the following rules:

1) all plaints subsequently submitted in connection with a case pending in a Court shall be submitted to such Court;

2) all plaints and applications submitted in connection with the execution of a judgment or order of a Court, which require a decision of the Court before such execution can be duly and fully carried out, shall be submitted to the Court specified in Section 302;

3) motions filed under Section 101 for perpetuating evidence in relation to a case pending in Court shall be filed with the Court where the case is being tried; should there be no case pending, the motion shall be filed with the Court within the territorial jurisdiction of which the witness to be examined, or the person, thing or place to be inspected, is to be found;

4) where an agreement has been made in writing whereby the parties to such agreement have agreed that an existing dispute or disputes, which may arise from a contract, shall be submitted to a particular Court of First Instance which has not or may not have territorial jurisdiction over the case under the provisions of this Code governing venue, the provisions of such agreement shall be binding, provided that the Court so designated be a Court within the territorial jurisdiction of which one of

๔ | เขตอำนาจศาล

ของเรื่องนั้นได้เกิดขึ้น หรือทรัพย์สินที่พิพาทกันนั้นตั้งอยู่ภายใน เขตศาลแห่งศาลนั้น ๆ

มาตรา ๔ ถ้าคดีสองเรื่องซึ่งมีประเด็นอย่างเดียวกัน หรือ เกี่ยวเนื่องใกล้ชิดกัน อยู่ในระหว่างพิจารณาของศาลชั้นต้นที่มีเขต อำนาจสองศาลต่างกัน และศาลทั้งสองนั้นได้ยกคำร้องทั้งหลายที่ได้ ยื่นต่อศาลขอให้คดีทั้งสองได้พิจารณาพิพากษารวมในศาลเดียวกัน นั้นเสีย ตราบใดที่ศาลใดศาลหนึ่งยังมีได้พิพากษาคดีนั้น ๆ คู่ความฝ่ายใดฝ่ายหนึ่งจะยื่นคำขอโดยทำเป็นคำร้องต่อ อธิบดีผู้ พิพากษาศาลอุทธรณ์ เพื่อขอให้มีการสั่งให้ศาลใดศาลหนึ่งจำหน่าย คดีซึ่งอยู่ในระหว่างพิจารณานั้นออกเสียจากสารบบความ หรือให้ โอนคดีไปยังอีกศาลหนึ่งก็ได้แล้วแต่กรณี

คำสั่งใด ๆ ของอธิบดีผู้พิพากษาศาลอุทธรณ์เช่นว่านี้ให้ เป็นที่สุด

มาตรา ๕ ในกรณีดังที่กล่าวในมาตราก่อนนั้น ถ้าศาลใด ศาลหนึ่งได้พิพากษาคดีแล้ว และได้มีการยื่นอุทธรณ์คัดค้านคำ พิพากษานั้น คู่ความฝ่ายใดฝ่ายหนึ่งอาจยื่นคำขอโดยทำเป็นคำร้อง ต่อศาลอุทธรณ์ ขอให้มีการสั่งให้งดการพิจารณาคดีชั้นอุทธรณ์นั้น ไว้ก่อนจนกว่าอีกศาลหนึ่งจะได้พิพากษาคดีอีกเรื่องหนึ่งเสร็จแล้วก็ได้ และถ้าได้มีการอุทธรณ์คดีเรื่องหลังนี้ ก็ให้ศาลอุทธรณ์รวมนิจฉัย คดีทั้งสองนั้นโดยคำพิพากษาเดียวกัน ถ้าคดีเรื่องหลังนั้นไม่มี อุทธรณ์ ให้บังคับตามบทบัญญัติแห่งมาตรา ๑๔๖

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the parties is domiciled, or the cause of action arose, or the property under dispute is situated.

Section 8.— Where two cases, in which the issues are the same or very closely connected, are pending in two different Courts of First Instance having territorial jurisdiction and competency over them, and both Courts have dismissed all motions submitted to them for having the two cases tried and adjudicated by one and the same Court, any party may, so long as neither Court has given judgment, apply by motion to the Chief Judge of the appeal Court for an order directing one of the Courts to strike the case pending before it out of its Case-List, or to transfer it to the other Court, as the case may be.

Any such order made by the Chief Judge of the appeal Court shall be final.

Section 9.— Where, in the case provided for in the foregoing Section, one of the Courts has given judgment and an appeal has been lodged against such judgment, any party may apply by motion to the Appeal Court for an order staying the appeal proceedings until the other Court has given judgment and, on appeal against such judgment, the Appeal Court shall give decision on both cases by one and the same judgment. Should there be no appeal against the judgment of such other Court, the provisions of Section 146 shall apply.

๕ | การคัดค้านผู้พิพากษา

มาตรา ๑๐ ถ้าไม่อาจดำเนินกระบวนการพิจารณาในศาลชั้นต้นที่หมดเขตศาลเหนือคดีนั้นได้โดยเหตุสุดวิสัย คู่ความฝ่ายที่เสียหายหรืออาจเสียหายเพราะการนั้นจะยื่นคำขอฝ่ายเดียวโดยทำเป็นคำร้องต่อศาลชั้นต้น ซึ่งตนมีภูมิลำเนาหรืออยู่ในเขตศาลในขณะนั้นก็ได้ และให้ศาลนั้นมีอำนาจทำคำสั่งอย่างใดอย่างหนึ่งตามที่เห็นสมควรเพื่อประโยชน์แห่งความยุติธรรม

หมวด ๒

การคัดค้านผู้พิพากษา

มาตรา ๑๑ เมื่อคดีถึงศาล ผู้พิพากษาคณหนึ่งคนใดในศาลนั้นอาจถูกคัดค้านได้ ในเหตุใดเหตุหนึ่งดังต่อไปนี้

(๑) ถ้าผู้พิพากษานั้นมีผลประโยชน์ได้เสียเกี่ยวข้องกับคู่ความในคดีนั้น

(๒) ถ้าเป็นญาติเกี่ยวข้องกับคู่ความฝ่ายใดฝ่ายหนึ่ง คือว่าเป็นบุพการี หรือผู้สืบสันดานไม่ว่าชั้นใด ๆ หรือเป็นพี่น้องหรือลูกพี่ลูกน้องนับได้เพียงภายในสามชั้น หรือเป็นญาติเกี่ยวพันทางแต่งงานนับได้เพียงสองชั้น

(๓) ถ้าเป็นผู้ที่ได้ถูกอ้างเป็นพยานโดยที่ผู้รู้ได้เห็นเหตุการณ์ หรือโดยเป็นผู้เชี่ยวชาญความรู้เป็นพิเศษเกี่ยวข้องกับคดีนั้น

(๔) ถ้าได้เป็นหรือเป็นผู้แทนโดยชอบธรรม หรือผู้แทนหรือได้เป็นทนายความของคู่ความฝ่ายใดฝ่ายหนึ่งมาแล้ว

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Section 10.- Where, owing to *force majeure*, a proceeding cannot be carried out in the Court of First Instance having territorial jurisdiction over the case, any party injured or likely to be injured thereby may file an *ex parte* application by motion with the Court of First Instance within the territorial jurisdiction of which he is domiciled or residing for the time being and that Court shall have power to make any order as it may think fit in the interest of justice.

CHAPTER II

CHALLENGE OF JUDGES

Section 11.- Where a case is in a Court, any judge of such Court may be challenged on any of the following grounds:

- 1) that he has an interest in such case;
- 2) that he is related to any of the parties, either as an ascendant or descendant to any degree, or as a collateral within the third degree, or by affinity within the second degree;
- 3) that he has been cited as a witness on account of his knowledge of the facts or as an expert on account of his having expert knowledge in connection with such case;
- 4) that he has been or is the legal representative or representative, or that he has been the lawyer, of any of the parties;



ภาคผนวก ก.

THE BRUSSELS CONVENTION, 1968.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

CONVENTION

on jurisdiction and the enforcement of judgments in civil and commercial matters ⁽¹⁾

(90/C 189/02)

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 ⁽²⁾;

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Pierre HARMEL,
Minister for Foreign Affairs:

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Willy BRANDT,
Vice-Chancellor,
Minister for Foreign Affairs:

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Michel DEBRÉ,
Minister for Foreign Affairs:

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Giuseppe MEDICI,
Minister for Foreign Affairs:

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Pierre GRÉGOIRE,
Minister for Foreign Affairs:

⁽¹⁾ Text as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland — hereafter referred to as the '1978 Accession Convention' — by the Convention of 25 October 1982 on the accession of the Hellenic Republic — hereafter referred to as the '1982 Accession Convention' — and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic — hereafter referred to as the '1989 Accession Convention'.

⁽²⁾ The Preamble of the 1989 Accession Convention contained the following text: 'MINDFUL that on 16 September 1988 the Member States of the Community and the Member States of the European Free Trade Association concluded in Lugano the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, which extends the principles of the Brussels Convention to the States becoming parties to that Convention'.

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr. J. M. A. H. LUNS,

Minister for Foreign Affairs;

WHO, meeting within 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 ⁽¹⁾.

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 of this Title.

⁽¹⁾ Second sentence added by Article 3 of the 1978 Accession Convention.

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 retsens pleje) ⁽²⁾,
- 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 (Κώδικας Πολιτικής Δικονομίας),
- 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: 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 Portugal: Article 65 (1) (c), Article 65 (2) and Article 65A (c) of the code of civil procedure (Código de Processo Civil) and Article 11 of the code of labour procedure (Código de Processo de Trabalho),
- 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

⁽²⁾ As amended by a Communication of 8 February 1988 made in accordance with Article VI of the annexed Protocol, and confirmed by Annex I (d) (1) to the 1989 Accession Convention.

- (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 ⁽¹⁾.

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⁾;
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.

⁽¹⁾ Second subparagraph as amended by Article 4 of the 1978 Accession Convention, by Article 3 of the 1982 Accession Convention and by Article 3 of the 1989 Accession Convention.

⁽²⁾ Point 1 as amended by Article 4 of the 1989 Accession Convention.

unless that jurisdiction is based solely on the nationality of one of the parties ⁽³⁾;

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. 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 ⁽⁴⁾;
- 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 ⁽⁵⁾.

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

⁽³⁾ Point 2 as amended by Article 5 (3) of the 1978 Accession Convention.

⁽⁴⁾ Point 6 added by Article 5 (4) of the 1978 Accession Convention.

⁽⁵⁾ Point 7 added by Article 5 (4) of the 1978 Accession Convention.

court seized 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 ⁽¹⁾.

Article 6 a (2)

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability 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 point 5.

Article 8 (3)

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.

⁽¹⁾ Point 4 added by Article 5 of the 1989 Accession Convention.

⁽²⁾ Article added by Article 6 of the 1978 Accession Convention.

⁽³⁾ Text as amended by Article 7 of the 1978 Accession Convention.

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 had 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 (4)

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

⁽⁴⁾ Text as amended by Article 8 of the 1978 Accession Convention.

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 domiciled 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 (1)

The following are the risks referred to in point 5 of Article 12:

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 point 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 point 1 (b) above;
3. Any financial loss connected with the use or operation of ships, installations or aircraft as referred to

(1) Article added by Article 9 of the 1978 Accession Convention.

in point 1 (a) above, in particular loss of freight or charter-hire;

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

Section 4 (2)

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 point 5 of Articles 4 and 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

(2) Text as amended by Article 10 of the 1978 Accession Convention.

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 counter-claim 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⁽¹⁾;

⁽¹⁾ Point 1 as amended by Article 6 of the 1989 Accession Convention.

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⁽²⁾

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.

⁽²⁾ Text as amended by Article 11 of the 1978 Accession Convention and by Article 7 of the 1989 Accession Convention.

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 this Convention.

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 or if the employee invokes it to seize 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 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 the 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 (1).

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 (2)

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.

(1) Second subparagraph as amended by Article 12 of the 1978 Accession Convention.

(2) Text as amended by Article 8 of the 1989 Accession Convention.

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 recognized in the other Contracting States 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 recognized.

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 recognized:

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⁽¹⁾;
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 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⁽²⁾;
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⁽³⁾.

⁽¹⁾ Point 2 as amended by Article 13 (1) of the 1978 Accession Convention.

⁽²⁾ Point 4 as amended by Annex I (a) (2) first subparagraph to the 1989 Accession Convention.

⁽³⁾ Point 5 added by Article 13 (2) of the 1978 Accession Convention and amended by Annex I (d) (2) second subparagraph to the 1989 Accession Convention.

Article 28

Moreover, a judgment shall not be recognized 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 of origin based its jurisdiction ⁽¹⁾.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in point 1 of Article 27 may not be applied to the rules relating to jurisdiction ⁽²⁾.

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 ⁽³⁾.

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 ⁽⁴⁾.

⁽¹⁾ As amended by Annex I (d) (3) first subparagraph to the 1989 Accession Convention.

⁽²⁾ As amended by Annex I (d) (3) second subparagraph to the 1989 Accession Convention.

⁽³⁾ Second subparagraph added by Article 14 of the 1978 Accession Convention and amended by Annex I (d) (4) to the 1989 Accession Convention.

⁽⁴⁾ Text as amended by Article 9 of the 1989 Accession Convention.

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 ⁽⁵⁾.

Article 32

1. The application shall be submitted:

— in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,

— in Denmark, to the byret ⁽⁶⁾,

— in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,

— in Greece, to the Μονομελές Πρωτοδικείο,

— in Spain, to the Juzgado de Primera Instancia,

— in France, to the presiding judge of the tribunal 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:

1. 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;

2. 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;

3. 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 ⁽⁷⁾.

⁽⁵⁾ Second subparagraph added by Article 15 of the 1978 Accession Convention.

⁽⁶⁾ As amended by a Communication of 8 February 1988 made in accordance with Article VI of the annexed Protocol, and confirmed by Annex I (d) (5) to the 1989 Accession Convention.

⁽⁷⁾ First subparagraph as amended by Article 16 of the 1978 Accession Convention, by Article 4 of the 1982 Accession Convention and by Article 10 of the 1989 Accession Convention.

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 authorized, 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 authorizing 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⁾

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 première instance or rechtbank van eerste aanleg,
- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in Greece, with the Εφετείο,
- 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 supérieure de justice sitting as a court of civil appeal,
- in the Netherlands, with the arrondissementsrechtbank,
- in Portugal, with the Tribunal de Relação,
- 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 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,

⁽¹⁾ Text as amended by Article 17 of the 1978 Accession Convention, by Article 5 of the 1982 Accession Convention and by Article 11 of the 1989 Accession Convention.

- 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 ⁽¹⁾.

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 ⁽²⁾.

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 authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Article 40

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 Εφετείο,
- in Spain, to the Audiencia Provincial,
- in France, to the court d'appel,

⁽¹⁾ As amended by Annex I (d) (6) first subparagraph to the 1989 Accession Convention.

⁽²⁾ Second subparagraph added by Article 18 of the 1978 Accession Convention and amended by Annex I (d) (6) second subparagraph to the 1989 Accession Convention.

- in Ireland, to the High Court,
- 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 Portugal, to the Tribunal da Relação,
- 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 ⁽³⁾.

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 ⁽⁴⁾

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.

⁽³⁾ First subparagraph as amended by Article 19 of the 1978 Accession Convention, by Article 6 of the 1982 Accession Convention and by Article 12 of the 1989 Accession Convention.

⁽⁴⁾ Text as amended by Article 20 of the 1978 Accession Convention, by Article 7 of the 1982 Accession Convention and by Article 13 of the 1989 Accession Convention.

Article 42

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize 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 ⁽¹⁾.

Article 44 ⁽²⁾

An applicant who, in the State of origin has benefited 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.

However, 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.

⁽¹⁾ As amended by Annex I (d) (7) to the 1989 Accession Convention.

⁽²⁾ Text as amended by Article 21 of the 1978 Accession Convention and by Annex I (d) (8) to the 1989 Accession Convention.

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 ⁽³⁾.

Article 47 ⁽⁴⁾

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 point 2 of Articles 46 and 47 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 legalization 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*.

⁽³⁾ Point 2 as amended by Article 22 of the 1978 Accession Convention.

⁽⁴⁾ As amended by Annex I (d) (9) to the 1989 Accession Convention.

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 ⁽¹⁾.

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 ⁽²⁾.

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.

... ⁽³⁾.

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.

⁽¹⁾ First paragraph as amended by Article 14 of the 1989 Accession Convention.

⁽²⁾ As amended by Annex I (d) (10) to the 1989 Accession Convention.

⁽³⁾ Third paragraph deleted by Article 15 of the 1989 Accession Convention.

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 ⁽⁴⁾.

TITLE VI

TRANSITIONAL PROVISIONS

Article 54 ⁽⁵⁾

The provisions of the 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 concluded between the State of origin and the State addressed which was in force when the proceedings were instituted ⁽⁶⁾.

⁽⁴⁾ Second subparagraph added by Article 23 of the 1978 Accession Convention.

⁽⁵⁾ Text as replaced by Article 16 of the 1989 Accession Convention.

⁽⁶⁾ Title V of the 1978 Accession Convention contains the following 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 recognized 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 recognized 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

If the parties to a dispute concerning a contract had agreed in writing before 1 June 1988 for Ireland or before 1 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 ⁽¹⁾.

Article 54a ⁽²⁾

For a period of three years from 1 November 1986 for Denmark and from 1 June 1988 for 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 10 May 1952, for one of these States, these provisions shall cease to have effect for that State.

(cont'd)

with provisions of a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.'

Title V of the 1982 Accession Convention contains the following transitional provisions:

Article 12

1. The 1968 Convention and the 1971 Protocol, as amended by the 1978 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 State of origin and the State addressed, judgments given after the date of entry into force of this Convention 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 by this Convention if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended by the 1968 Convention 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.'

Title VI of the 1989 Accession Convention contains the following 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.'

⁽¹⁾ This paragraph replaces Article 35 of Title V of the 1978 Accession Convention which was extended to the Hellenic Republic by Article 1 (2) of the 1982 Accession Convention. Article 28 of the 1989 Accession Convention provided for the deletion of both these provisions.

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

⁽²⁾ Article added by Article 17 of the 1989 Accession Convention. It corresponds to Article 36 of Title V of the 1978 Accession Convention which was extended to the Hellenic Republic by Article 1 (2) of the 1982 Accession Convention. Article 28 of the 1989 Accession Convention provided for the deletion of both these provisions.

- 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 masters, officers or crew;
 - (n) mater'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 subparagraph 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 1899,
- 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 28 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 (1),
- the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934 (1),
- 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,

(1) Fourth and fifth indents added by Article 24 of the 1978 Accession Convention.

- 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 ⁽¹⁾,
- the Convention between the Kingdom of Greece and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4 November 1961 ⁽²⁾,
- 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 ⁽³⁾,
- 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 17 November 1967 ⁽³⁾,
- the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969 ⁽⁴⁾,
- 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 ⁽⁴⁾,

⁽¹⁾ Ninth indent added by Article 24 of the 1978 Accession Convention.

⁽²⁾ 10th indent added by Article 8 of the 1982 Accession Convention.

⁽³⁾ 13th and 14th indents added by Article 24 of the 1978 Accession Convention.

⁽⁴⁾ 15th, 16th and 17th indents added by Article 18 of the 1989 Accession Convention.

- 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 ⁽⁴⁾,

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 ⁽¹⁾.

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 this 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

⁽¹⁾ First paragraph as amended by Article 25 (1) of the 1978 Accession Convention and by Article 19 of the 1989 Accession Convention.

for recognition and enforcement of judgments may be applied⁽¹⁾.

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⁽²⁾.

Article 58⁽³⁾

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 recognize 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 recognize 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

⁽¹⁾ Paragraph 2 added by Article 19 of the 1989 Accession Convention. This paragraph corresponds to Article 25 (2) of the 1978 Accession Convention which was extended to the Hellenic Republic by Article 1 (2) of the 1982 Accession Convention. Article 28 of the 1989 Accession Convention provided for the deletion of both these provisions.

⁽²⁾ Paragraph added by Article 25 (1) of the 1978 Accession Convention.

⁽³⁾ Text as amended by Article 20 of the 1989 Accession Convention.

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⁽⁴⁾.

TITLE VIII

FINAL PROVISIONS

Article 60

...⁽⁵⁾.

Article 61⁽⁶⁾

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⁽⁷⁾

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 recognize that any State which becomes a member of the European Economic Com-

⁽⁴⁾ Second subparagraph added by Article 26 of the 1978 Accession Convention.

⁽⁵⁾ Article 21 of the 1989 Accession Convention provides for the deletion of Article 60 as amended by Article 27 of the 1978 Convention.

⁽⁶⁾ Ratification of the 1978 and 1982 Accession Conventions was governed by Articles 38 and 14 of those Conventions. The ratification of the 1989 Accession Convention is governed by Article 31 of that Convention, which reads as follows:

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.

⁽⁷⁾ The entry into force of the 1978 and 1982 Accession Conventions was governed by Articles 39 and 15 of those Conventions.

The entry into force of the 1989 Accession Convention is governed by Article 32 of that Convention, which reads as follows:

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.

munity 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 States of the other part.

Article 64⁽¹⁾

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) ...⁽²⁾;
- (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.

⁽¹⁾ Notification concerning the 1978 and 1982 Accession Conventions is governed by Articles 40 and 16 of those Conventions.

Notification concerning the 1989 Accession Convention is governed by Article 33 of that Convention, which reads as follows:

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.

⁽²⁾ Article 22 of the 1989 Accession Convention provides for the deletion of letter (c) as amended by Article 28 of the 1978 Accession Convention.

Article 68⁽³⁾

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⁽⁴⁾.

⁽³⁾ An indication of the authentic texts of the Accession Conventions is to be found in the following provisions:

- with regard to the 1978 Accession Convention, in Article 41 of that Convention, which reads as follows:

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.

- with regard to the 1982 Accession Convention, in Article 17 of that Convention, which reads as follows:

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.

- with regard to the 1989 Accession Convention, in Article 34 of that Convention, which reads as follows:

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.

⁽⁴⁾ Legal backing for the drawing-up of the authentic texts of the 1968 Convention in the official languages of the acceding Member States is to be found:

- with regard to the 1978 Accession Convention, in Article 37 of that Convention, which reads as follows:

Article 37

The Secretary-General of the Council of the European Communities 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.

- with regard to the 1982 Accession Convention, in Article 13 of that Convention, which reads as follows:

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.

(cont'd)

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.'

— with regard to the 1989 Accession Convention, in Article 30 of that Convention, which reads as follows: '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 the 1982 Convention in the Danish, Dutch, English, French, German, Greek, 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.'

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter dieses Übereinkommen gesetzt.

En foi de quoi les plénipotentiaires soussignés ont apposé leur signature en bas de la présente convention.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de onderscheiden gevolmachtigden hun handtekening onder dit Verdrag hebben gesteld.

Geschehen zu Brüssel am siebenundzwanzigsten September neunzehnhundertachtundsechzig.

Fait à Bruxelles, le vingt-sept septembre mil neuf cent soixante-huit.

Fatto a Bruxelles, addì ventisette settembre millenovecentosessantotto.

Gedaan te Brussel, op zevenentwintig september negentienhonderdachtentwintig.

Pour Sa Majesté le roi des Belges
Voor Zijne Majesteit de Koning der Belgen
Pierre HARMEL

Für den Präsidenten der Bundesrepublik Deutschland
Willy BRANDT

Pour le président de la République française
Michel DEBRE

Per il presidente della Repubblica italiana
Giuseppe MEDICI

Pour son Altesse Royale le grand-duc de Luxembourg
Pierre GREGOIRE

Voor Hare Majesteit de Koningin der Nederlanden
J. M. A. H. LUNS (1)

(1) The 1978, 1982 and 1989 Accession Conventions were signed by the respective Plenipotentiaries of the Member states. The signature of the Plenipotentiary of the Kingdom of Denmark to the 1989 Accession Convention is accompanied by the following text: 'Subject to the right to table a territorial reservation concerning the Faroes and Greenland in connection with ratification, but with the possibility of subsequently extending the Convention to cover the Faroes and Greenland.'

PROTOCOL ⁽¹⁾

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 recognized 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.

⁽¹⁾ Text as amended by the 1978 Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention.

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 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 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 point 2 of Article 6 or Article 10 shall be recognized 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 of the code of civil procedure (*Zivilprozeßordnung*) shall also be recognized in the other Contracting States.

Article Va ⁽²⁾

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

Article Vb ⁽³⁾

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship regis-

⁽²⁾ Article added by Article 29 of the 1978 Accession Convention

⁽³⁾ Article added by Article 29 of the 1978 Accession Convention, amended by Article 9 of the 1982 Accession Convention and by Article 23 of the 1989 Accession Convention.

tered in Denmark, in Greece, 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 Vc⁽¹⁾

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.

(1) Article added by Article 29 of the 1978 Accession Convention.

Article Vd⁽²⁾

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.

(2) Article added by Article 29 of the 1978 Accession Convention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter dieses Protokoll gesetzt.

En foi de quoi les plénipotentiaires soussignés ont apposé leur signature au bas du présent protocole.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente protocollo.

Ten blijke waarvan de onderscheiden gevolmachtigden hun handtekening onder dit Protocol hebben gesteld.

Geschehen zu Brüssel am siebenundzwanzigsten September neunzehnhundertachtundsechzig.

Fait à Bruxelles, le vingt-sept septembre mil neuf cent soixante-huit.

Fatto a Bruxelles, addì ventisette settembre millenovecentosessantotto.

Gedaan te Brussel, op zeventwintig september negentienhonderd achtenzestig.

Pour Sa Majesté le roi des Belges
Voor Zijne Majesteit de Koning der Belgen

Pierre HARMEL

Für den Präsidenten der Bundesrepublik Deutschland

Willy BRANDT

Pour le président de la République française

Michel DEBRE

Per il presidente della Repubblica italiana
Giuseppe MEDICI

Pour Son Altesse Royale le grand-duc de Luxembourg

Pierre GREGOIRE

Voor Hare Majesteit de Koningin der Nederlanden

J. M. A. H. LUNS

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On signing the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters,

Desiring to ensure that the Convention is applied as effectively as possible,

Anxious to prevent differences of interpretation of the Convention from impairing its unifying effect,

Recognizing that claims and disclaimers of jurisdiction may arise in the application of the Convention,

Declare themselves ready:

1. to study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
2. to arrange meetings at regular intervals between their representatives.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter diese Gemeinsame Erklärung gesetzt.

En foi de quoi les plénipotentiaires ont apposé leur signature au bas de la présente déclaration commune.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente dichiarazione comune.

Ten blijke waarvan de onderscheiden gevolmachtigden hun handtekening onder deze Gemeenschappelijke Verklaring hebben gesteld.

Geschehen zu Brüssel am siebenundzwanzigsten September neunzehnhundertachtundsechzig.

Fait à Bruxelles, le vingt-sept septembre mil neuf cent soixante-huit.

Fatto a Bruxelles, addì ventisette settembre millenovecentosessantotto.

Gedaan te Brussel, op zevenontwintig september negentienhonderd achtenzestig.

Pierre HARMEL
Giuseppe MEDICI

Willy BRANDT
Pierre GREGOIRE

Michel DEBRE
J. M. A. H. LUNS

PROTOCOL

on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters ⁽¹⁾

(90/C 189/03)

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Declaration annexed to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27 September 1968,

Have decided to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Alfons VRANCKX,
Minister of Justice;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Gerhard JAHN,
Federal Minister of Justice;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr René PLEVEN,
Keeper of the Seals,
Minister of Justice;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Erminio PENNACCHINI,
Under Secretary of State in the Ministry of Justice;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Eugène SCHAUS,
Minister of Justice,
Deputy Prime Minister;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr C. H. F. POLAK,
Minister of Justice;

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

⁽¹⁾ Text as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland — hereafter referred to as the '1978 Accession Convention' — by the Convention of 25 October 1982 on the accession of the Hellenic Republic — hereafter referred to as the '1982 Accession Convention', and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic — hereafter referred to as the '1989 Accession Convention'.

HAVE AGREED AS FOLLOWS:

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 (1).

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 Hellenic Republic to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention (2).

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 (3).

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'État — de Raad van State,
- in Denmark: højesteret,
- in the Federal Republic of Germany: die obersten Gerichtshöfe des Bundes,
- in Greece: the ανώτατα δικαστήρια,
- in Spain: el Tribunal Supremo,

(1) Second paragraph added by Article 30 of the 1978 Accession Convention.

(2) Third paragraph added by Article 10 of the 1982 Accession Convention.

(3) Fourth paragraph added by Article 24 of the 1989 Accession Convention.

- in France: la Cour de Cassation and le Conseil d'État,
- in Ireland: the Supreme Court,
- in Italy: la Corte Suprema di Cassazione,
- in Luxembourg: la Cour supérieure de Justice when sitting as Cour de Cassation,
- in the Netherlands: de Hoge Raad,
- in Portugal: o Supremo Tribunal de Justiça and o Supremo Tribunal Administrativo,
- 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 (4);

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 courts 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 point 1 of Article 2, 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 point 2 or 3 of Article 2, 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 a judgment of one of the courts of another Contracting State referred to in point 1 or 2 of Article 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.

(4) Point 1 as amended by Article 31 of the 1978 Accession Convention, by Article 11 of the 1982 Accession Convention and by Article 25 of the 1989 Accession Convention.

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 two 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 on 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

...⁽¹⁾

Article 7⁽²⁾

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⁽³⁾

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 Septem-

ber 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

Article 9

The Contracting States recognize that any State which becomes a member of the European Economic 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⁽⁴⁾

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) ...⁽⁵⁾.

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 point 1 of Article 2.

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⁽⁶⁾

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⁽⁷⁾.

⁽¹⁾ Article 26 of the 1989 Accession Convention provides for the deletion of Article 6 as amended by Article 32 of the 1978 Accession Convention.

⁽²⁾ See footnote 6 on page 18.

⁽³⁾ See footnote 7 on page 18.

[29 I.L.M. 1433 (1990).]

⁽⁴⁾ See footnote 1 on page 19. [29 I.L.M. 1434 (1990)]

⁽⁵⁾ Article 27 of the 1989 Accession Convention provides for the deletion of (d) as amended by Article 33 of the 1978 Accession Convention.

⁽⁶⁾ See footnote 3 on page 19.

⁽⁷⁾ See footnote 4 on page 19.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter dieses Protokoll gesetzt.

En foi de quoi les plénipotentiaires soussignés ont apposé leur signature au bas du présent protocole.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente protocollo.

Ten blijke waarvan de onderscheiden gevolmachtigden hun handtekening onder dit Protocol hebben gesteld.

Geschehen zu Luxembourg am dritten Juni neunzehnhunderteinundsiebzig.

Fait à Luxembourg, le trois juin mil neuf cent soixante et onze.

Fatto a Lussemburgo, addi tre giugno millenovecentosettantuno.

Gedaan te Luxemburg, de derde juni negentienhonderd eenenzeventig.

Pour Sa Majesté le roi des Belges
Voor Zijne Majesteit de Koning der Belgen

Alfons VRANCKX

Für den Präsidenten der Bundesrepublik Deutschland

Gerhard JAHN

Pour le président de la République française

René PLEVEN

Per il presidente della Repubblica italiana

Erminio PENNACCHINI

Pour Son Altesse Royale le grand-duc de Luxembourg

Eugène SCHAUS

Voor Hare Majesteit de Koningin der Nederlanden

C. H. F. POLAK

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On signing the Protocol on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,

Desiring to ensure that the provisions of that Protocol are applied as effectively and as uniformly as possible,

Declare themselves ready to organize, in cooperation with the Court of Justice, an exchange of information on the judgments given by the courts referred to in Article 2 (1) of that Protocol in application of the Convention and the Protocol of 27 September 1968.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter diese Gemeinsame Erklärung gesetzt.

En foi de quoi les plénipotentiaires soussignés ont apposé leur signature au bas de la présente déclaration commune.

In fede di che i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente dichiarazione comune.

Ten blijke waarvan de onderscheiden gevolmachtigden hun handtekening onder deze Gemeenschappelijke Verklaring hebben gesteld.

Geschehen zu Luxemburg am dritten Juni neunzehnhunderteinundsiebzig.

Fait à Luxembourg, le trois juin mil neuf cent soixante et onze.

Fatto a Lussemburgo, addì tre giugno millenovecentosettantuno.

Gedaan te Luxemburg, de derde juni negentienhonderd eenenzeventig.

Pour Sa Majesté le roi des Belges
Voor Zijne Majesteit de Koning der Belgen
Alfons VRANCKX

Für den Präsidenten der Bundesrepublik Deutschland
Gerhard JAHN

Pour le président de la République française
René PLEVEN

Per il presidente della Repubblica italiana
Erminio PENNACCHINI

Pour Son Altesse Royale le grand-duc de Luxembourg
Eugène SCHAUS

Voor Hare Majesteit de Koningin der Nederlanden
C. H. F. POLAK

JOINT DECLARATION

of 9 October 1978

(90/C 189/04)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN ECONOMIC COMMUNITY, MEETING WITHIN THE COUNCIL,

Desiring to ensure that in the spirit of the Convention of 27 September 1968 uniformity of jurisdiction should also be achieved as widely as possible in maritime matters,

Considering that the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952, contains provisions relating to such jurisdiction,

Considering that all of the Member States are not parties to the said Convention,

Express the wish that Member States which are coastal States and have not already become parties to the Convention of 10 May 1952 should do so as soon as possible.

Udfærdiget i Luxembourg, den niende oktober nitten hundrede og otteoghalvfjerds.

Geschehen zu Luxemburg am neunten Oktober neunzehnhundertachtundsiebzig.

Done at Luxembourg on the ninth day of October in the year one thousand nine hundred and seventy-eight.

Fait à Luxembourg, le neuf octobre mil neuf cent soixante-dix-huit.

Arna dhéanamh i Lucsamburg, an naoú lá de Dheireadh Fómhair sa bhliain míle naoi gcéad seachtó a hocht.

Fatto a Lussemburgo, addì nove ottobre millenovecentosettantotto.

Gedaan te Luxemburg, de negende oktober negentienhonderd achtenzeventig.

Pour Sa Majesté le roi des Belges
Voor Zijne Majesteit de Koning der Belgen
Renaat VAN ELSLANDE

For Hendes Majestæt Danmarks Dronning
Nathalie LIND

Für den Präsidenten der Bundesrepublik Deutschland
Dr Hans-Jochen VOGEL

Pour le président de la République française
Alain PEYREFITTE

Thar ceann Uachtarán na hEireann
Gerard COLLINS

Per il presidente della Repubblica italiana
Paolo BONIFACIO

Pour Son Altesse Royale le grand-duc de Luxembourg
Robert KRIEPS

Voor Hare Majesteit de Koningin der Nederlanden
Prof. Mr J. de RUITER

For Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland
The Right Honourable the Lord ELWYN-JONES, CH.

JOINT DECLARATION

of 26 May 1989

concerning the ratification of the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the 1968 Brussels Convention

(90/C 189/05)

Upon signature of the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the 1968 Brussels Convention, done at Donostia — San Sebastián on 26 May 1989,

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES, MEETING WITHIN THE COUNCIL,

DESIROUS that, in particular with a view to the completion of the internal market, application of the Brussels Convention and of the 1971 Protocol should be rapidly extended to the entire Community,

WELCOMING the conclusion on 16 September 1988 of the Lugano Convention which extends the principles of the Brussels Convention to those States becoming parties to the Lugano Convention, designed principally to govern relations between the Member States of the European Economic Community (EEC) and those of the European Free Trade Association (EFTA) with regard to the legal protection of persons established in any of those States and to the simplification of formalities for the reciprocal recognition and enforcement of judgments,

CONSIDERING that the Brussels Convention has as its legal basis Article 220 of the Treaty of Rome and is interpreted by the Court of Justice of the European Communities,

MINDFUL that the Lugano Convention does not affect the application of the Brussels Convention as regards relations between Member States of the European Economic Community, since such relations must be governed by the Brussels Convention,

NOTING that the Lugano Convention is to enter into force after two States, of which one is a member of the European Communities and the other a member of the European Free Trade Association, have deposited their instruments of ratification,

DECLARE THEMSELVES READY to take every appropriate measure with a view to ensuring that national procedures for the ratification of the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the Brussels Convention, signed today, are completed as soon as possible and, if possible, by 31 December 1992 at the latest.

En fe de lo cual, los abajo firmantes suscriben la presente Declaración común.

Til bekræftelse heraf har undertegnede underskrevet denne erklæring.

Zu Urkund dessen haben die Unterzeichneten diese Erklärung unterschrieben.

Σε πίστωση των ανωτέρω, οι κάτωθι υπέγραψαν την παρούσα δήλωση.

In witness whereof the undersigned have signed this declaration.

En foi de quoi, les soussignés ont signé la présente déclaration.

Dá fhianú sin, chuir na daoine thíos-sinthe a lámh leis an Dearbhú seo.

In fede di che, i sottoscritti hanno firmato la presente dichiarazione.

Ten blijke waarvan de ondergetekenden hun handtekening onder deze verklaring hebben gesteld.

Em fê do que, os abaixo-assinados apuseram a sua assinatura no final da presente declaração comum.

Hecho en Donostia — San Sebastián, a veintiseis de mayo de mil novecientos ochenta y nueve.

Udfærdiget i Donostia — San Sebastián, den seksogtyvende maj nitten hundrede og niog-firs.

Geschehen zu Donostia — San Sebastián am sechszwanzigsten Mai neunzehnhundert-neunundachtzig.

Έγινε στη Donostia — San Sebastián, στις είκοσι έξι Μαΐου χίλια εννιακόσια ογδόντα εννέα.

Done at Donostia — San Sebastián on the twenty-sixth day of May in the year one thousand nine hundred and eighty-nine.

Fait à Donostia — San Sebastián, le vingt-six mai mil neuf cent quatre-vingt-neuf.

Arna dhéanamh in Donostia — San Sebastián, an séú lá is fiche de Bhealtaine sa bhliain míle naoi gcéad ochtó a naoi.

Fatto a Donostia — San Sebastián, addi ventisei maggio millenovecentottantanove.

Gedaan te Donostia — San Sebastián, de zesentwintigste mei negentienhonderd negent-achtig.

Feito em Donostia — San Sebastián, em vinte e seis de Maio de mil novecentos e oitenta e nove.

Pour le gouvernement du royaume de Belgique
voor de Regering van het Koninkrijk België

Jacques de LENTDECKER

For regeringen for Kongeriget Danmark (1)

Jette Birgitte SELSØ

Für die Regierung der Bundesrepublik Deutschland

Dr Georg TREFFTZ

Dr Klaus KINKEL

Για την Κυβέρνηση της Ελληνικής Δημοκρατίας

Γιάννη ΣΚΟΘΛΑΠΙΚΗ

Por el Gobierno del Reino de España

Enrique MUGICA HERZOG

Pour le gouvernement de la République française

Pierre ARPAILLANGE

Thar ceann Rialtas na hEireann

Patrick WALSHE

Per il governo della Repubblica italiana

Giuliano VASSALLI

Pour le gouvernement du grand-duché de Luxembourg

Ronald MAYER

Voor de Regering van het Koninkrijk der Nederlanden

Frits KORTHALS ALTES

J. SPOORMAKER

Pelo Governo da República Portuguesa

Fernando NOGUEIRA

For the Government of the United Kingdom of Great Britain and Northern Ireland

John PATTEN

(1) With a reservation concerning the Faroes and Greenland. See footnote 1 on page 20. [29 I.L.M. 1435 (1990)



ภาคผนวก ง.

THE LUGANO CONVENTION, 1988.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

CONVENTION
on jurisdiction and the enforcement of judgments 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 cooperation 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, 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 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 — Gerechtelijk 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 (Κώδικας πολιτικής δικουομίας),
- 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 einkamala í heraði),
- 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 (tvistemålsloven),
- in Austria: Article 99 of the Law on Court Jurisdiction (Jurisdiktionsnorm)
- in Portugal: Articles 65 (1) (c), 65 (2) and 65A (c) of the code of civil procedure (Código 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 federale 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 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 the 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 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 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 Article 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 is 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 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 recognized in the other Contracting States 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 Section 2 and 3 of this Title, apply for a decision that the judgment be recognized.

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 recognized:

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 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 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 recognized if it conflicts with the provisions of Sections 3, 4 or 5 of Title II or in a case provided for in Article 59.

A judgment may furthermore be refused recognition in any case provided for in 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 première 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 μονομελές πρωτοδικείο,
- in Spain, to the Juzgado de Primera Instancia,
- in France, to the presiding judge of the tribunal de grande instance,
- in Ireland, to the High Court,
- in Iceland, to the héraðsdómari,
- 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 fédérale 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 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 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 authorized, 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 authorizing 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 première instance or rechtsbank van eerste aanleg,
- in Denmark, with the landsret,
- in the Federal Republic of Germany, with the Oberlandesgericht,
- in Greece, with the εφετσιο,
- 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 arrondissements-rechtsbank,

- 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 Magistrates' 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 Hæstirettur,
- in Norway, by an appeal (kjæremål or anke) to the Høyesteretts Kjæremålsutvalg or Høyesterett,
- 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 / 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 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 authorizing 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 εφετείο,
- in Spain, to the Audiencia Provincial,
- in France, to the cour d'appel,
- in Ireland, to the High Court,
- in Iceland, to the héraðsdómari,
- 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 cantonale,
- 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 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 Iceland, by an appeal to the Hæstiréttur,
- in Norway, by an appeal (kjæremål or anke) to the Høyesteretts kjæremålsutvalg or Høyesterett,
- 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 authorized for all of them, the court shall authorize 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 benefited 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 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 Articles 46 (2) and 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 legalization 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 Articles 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 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 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 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 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 rettens 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 um kyrretningu 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 Article 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 the 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 recognized or enforced under any rule of law in the State addressed.

Article 55

Subject to the provisions of Articles 54 (2) and 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 judgements 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 recognized 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 recognized 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 recognize 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 recognize 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, 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

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 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 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.

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.

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 1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol 2, on the uniform interpretation of the Convention,
- a Protocol 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 1;
- (e) any declaration received pursuant to Article Ib of Protocol 1;
- (f) any declaration received pursuant to Article IV of Protocol 1;
- (g) any communication made pursuant to Article VI of Protocol 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.

PROTOCOL 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 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 Ia

1. 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 recognized 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 recognize 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 seized 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 recognized 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 10 shall be recognized and enforced in the Federal Republic of Germany, in Spain, in Austria and in Switzerland in accordance with Title III. Any effects which judgments given in these States may have on third parties by application of the provisions in the preceding paragraph shall also be recognized 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 ulosotonhaltija / 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.

จุฬาลงกรณ์มหาวิทยาลัย

PROTOCOL 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 deference 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.

- 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.

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,

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 purposes 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 depositary 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 indent of Article 2 (1),
- 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 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 Article 57 (1).
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 2.

DECLARATION

by the representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Communities on Protocol 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 power to ensure, when Community acts referred to in paragraph 1 of Protocol 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.

[This declaration was signed by representatives of Belgium, Denmark, Greece, Italy, Luxembourg, and Portugal.]

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 account 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 same as above.]

DECLARATION

by the Representatives of the Governments of the States signatories to the Lugano Convention which are members of the European Free Trade Association

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.

[This declaration was signed by representatives of Iceland, Norway, Switzerland, and Sweden.]

ร่างความตกลงเรื่องการยอมรับและบังคับตามคำพิพากษาใน
คดีแพ่งและพาณิชย์ระหว่างราชอาณาจักรไทย และราชอาณาจักรสเปน *

Agreement between the Kingdom of Thailand and Kingdom of Spain on
Recognition and Enforcement of Decisions in civil and commercial matters

The Kingdom of Thailand and Kingdom of Spain (hereinsfler referred to as the
two Parties), for the purpose of further strengthening the ties of friendship and cooperation
between their countries, and desiring to carry out, on the basis of mutual respect for
sovereignty, equality and mutual benefit, judicial cooperation in civil and commercial matters.

Having resolved to conclude the present Agreement and to this end, have
appointed their plenipotentiaries :

- 1)
- 2)

who, after exchanging their respective Full Power, which were found to be in good and due
form, have agreed as follows :

Article 1

Scope

1. In civil and commercial matters, one Party shall in its territory recognize and
anforce the decisions given by the courts of the other Party, under the conditions stipulated in
this Agreement.

2. "Decisions" referred to in this Agreement also include conciliation reports
rendered by courts.

* ขณะที่ยังไม่มีสัตยาบันฉบับนี้ (10 เมษายน 2539) ยังคงเป็นร่างฯ ซึ่งไม่ได้ให้บังคับ.

Article 2

Denial of Recognition or Enforcement

.....enforcement of the decisions listed in Article 1 may be denied in.....

- a). if the requested Party considers that recognition or enforcement of the decision is likely to prejudice its sovereignty, security, public order or essential interests;
- b). if the decision has not come into force or is not enforceable in accordance with the law of the Party rendering the decision;
- c). if the decision is rendered by the court having not jurisdiction over the case in accordance with the provisions of Article 3;
- d). in the case of decision rendered by default, if the defeated party has not been legally summoned, or the party without capacity for action has not been properly represented in accordance with the law of the Party rendering the decision;
- e). if a court of the requested Party has rendered an effective decision on the litigation between the same litigants and on the same subject or has recognized the effective decision rendered by a third State on the litigation;

Article 3

Jurisdictions

1. For the purpose of this Agreement, the court of one of the two Parties rendering the decision shall be considered to have jurisdiction on the case if:

- a). the defendant has his domicile or residence in the territory of that Party at the time when the proceeding were instituted; or
- b). the defendant has in the territory of that Party his agent at the time when the proceedings arising from business were instituted; or
- c). the defendant has accepted explicitly and in writing the jurisdiction of the court of the Party; or

- d). the defendant has argued the merits without challenging the jurisdiction of the court; or
- e). in case of contractual dispute, the contract has been concluded in the territory of that Party or has been or shall be performed therein, or the object of the proceedings is located therein; or
- f). in case of non-contractual torts, the infringing act or the result thereof occurs in the territory of that Party; or
- g). in case of personal status, the litigant has his domicile or residence in the territory of that Party; or
- h). in case of the maintenance obligations, the debtor has his domicile or residence in the territory of that Party; or
- I). in case of succession, the deceased person has his domicile or principal property in the territory of that Party at the time of his death
- j). the real estate as the object of the proceedings is located in the territory of that Party.

- 2. a). The provisions stipulated in paragraph 1 shall not prejudice the exclusive jurisdictions provided for by the law of each Party.
- b). The two Parties shall notify each other in writing through diplomatic channel the provisions relating to the exclusive jurisdictions stipulated in their respective laws.

Article 4

Submitting of Request

- 1. Request for recognition and enforcement of decisions may be submitted by parties directly to the courts having the competence to recognize and enforce the decisions, or by courts of one Party to the courts of the other Party having the competence to recognize and enforce the decisions through their central authorities.



ประวัติผู้เขียน

นายคมวัชร เอียงอ่อง เกิดวันที่ 20 ธันวาคม 2513 ที่อำเภอศรีสำโรง จังหวัดสุโขทัย สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ในปีการศึกษา 2534 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต ที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ. 2535



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย