UNIFORM CHOICE OF COURT AGREEMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

UNIFORM CHOICE OF COURT AGREEMENT ACT

WITHOUT PREFATORY NOTE AND WITH REPORTER’S NOTES

Copyright ©2009
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

July 10, 2009
DRAFTING COMMITTEE ON CHOICE OF COURTS AGREEMENT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

REX BLACKBURN, P.O. Box 70 (83707), 1221 W. Idaho St., Boise, ID 83702, Chair
C. ARLEN BEAM, U.S. Court of Appeals, 435 Federal Bldg., Lincoln, NE 68508
RHODA B. BILLINGS, 5525 Williams Rd., Lewisville, NC 27023
K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910
ROBERT H. CORNELL, 573 Arkansas, San Francisco, CA 94107
HENRY DEEB GABRIEL, JR., 201 North Greene St., Greensboro, NC 27401
HARRIET LANSING, 313 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155
RYAN LEONARD, 116 E. Sheridan, Suite 207, Oklahoma City, OK 73104
HARVEY S. PERLMAN, University of Nebraska-Lincoln, 201 Canfield Administration Bldg.,
Lincoln, NE 68588-0419
DANIEL ROBBINS, 15301 Ventura Blvd., Bldg. E, Sherman Oaks, CA 91403
H. KATHLEEN PATCHEL, Indiana University, School of Law-Indianapolis, 5715 E. 56th St.,
Indianapolis, IN 46226, National Conference Reporter
LOUISE ELLEN TEITZ, Roger Williams University School of Law, Ten Metacom Ave., Bristol, RI 02809, Co-Reporter

EX OFFICIO
MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563,
President
WILLIAM R. BREETZ, JR., University of Connecticut School of Law, Knight Hall Room 202,
35 Elizabeth St., Hartford, CT 06105, Division Chair

AMERICAN BAR ASSOCIATION ADVISOR
KEITH MCLENNAN, 3770 Ridge Pike, 2nd Flr., Collegeville, PA 19426, ABA Advisor

EXECUTIVE DIRECTOR
JOHN A. SEBERT, 111 N. Wabash Ave, Suite 1010, Chicago, IL 60602, Executive Director

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org
UNIFORM CHOICE OF COURT AGREEMENT ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.............................................................. 1
SECTION 2. PURPOSE........................................................................ 1
SECTION 3. DEFINITIONS............................................................... 1
SECTION 4. SCOPE........................................................................... 3
SECTION 5. EXCLUSIVE CHOICE OF COURT AGREEMENT AS INDEPENDENT
AGREEMENT.................................................................................. 12
SECTION 6. WHEN CHOICE OF COURT AGREEMENT DEEMED EXCLUSIVE........... 12
SECTION 7. RESIDENCE OF AN ORGANIZATION........................................ 12
SECTION 8. DUTY OF CHOSEN COURT TO ACCEPT JURISDICTION..................... 13
SECTION 9. DUTY OF COURT NOT CHOSEN TO DECLINE JURISDICTION............... 15
SECTION 10. RECOGNITION OF JUDGMENT OF CHOSEN COURT OR COURT TO
WHICH CASE HAS BEEN TRANSFERRED........................................ 15
SECTION 11. EXCEPTIONS TO RECOGNITION OF A JUDGMENT......................... 17
SECTION 12. PRELIMINARY QUESTIONS............................................... 20
SECTION 13. NON-COMPENSATORY DAMAGES......................................... 21
SECTION 14. RECOGNITION OF JUDGMENTS BASED ON CONTRACTS OF
INSURANCE.................................................................................... 21
SECTION 15. RECOGNITION OF JUDGMENT RENDERED BY COURT CHOSEN IN
NON-EXCLUSIVE CHOICE OF COURT AGREEMENT............................... 21
SECTION 16. DOCUMENTS TO BE PRODUCED IN CONNECTION WITH
REQUEST FOR RECOGNITION..................................................... 23
SECTION 17. ENFORCEMENT OF JUDGMENT RECOGNIZED BY THIS STATE........ 24
SECTION 18. JUDICIAL SETTLEMENTS (TRANSACTIONS JUDICIAIRES).............. 25
SECTION 19. SEVERABILITY............................................................. 26
SECTION 20. PROCEDURE FOR RECOGNITION OF JUDGMENT....................... 26
SECTION 21. STATUTE OF LIMITATIONS APPLICABLE TO RECOGNITION
PROCEEDINGS............................................................................. 27
SECTION 22. STAY OF PROCEEDINGS PENDING APPEAL OF JUDGMENT........... 27
SECTION 23. INTERNATIONAL CHARACTER; UNIFORMITY OF
INTERPRETATION........................................................................... 27
SECTION 24. SAVINGS CLAUSE.......................................................... 28
SECTION 25. TRANSITION PROVISIONS; EFFECTIVE DATE............................ 28
UNIFORM CHOICE OF COURT AGREEMENT ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the [Uniform Choice of Court Agreement Act].

SECTION 2. PURPOSE. The purpose of this [act] is to implement the Hague Convention of 30 June 2005 on Choice of Court Agreements in this state.

SECTION 3. DEFINITIONS. In this [act]:

(a) “Choice of court agreement” means an agreement between two or more persons, concluded or document in a record, which designates the court or courts of one or more member countries, for the purpose of deciding disputes that have arisen or may arise in connection with a particular legal relationship.

(b) “Chosen court” means the court or courts within a member country designated in an exclusive choice of court agreement.

(c) “Convention” means the Hague Convention of 30 June 2005 on Choice of Court Agreements.

(d) “Country of origin” means the member country in which the court of origin is located.

(e) “Court of origin” means the court that granted the judgment.

(f) “Exclusive choice of court agreement” means a choice of court agreement that designates the courts of only one member country or one or more specific courts of only one member country, to the exclusion of the jurisdiction of any other courts, unless the parties expressly provide that the choice of court agreement is not exclusive.

(g) “International case” (1) for purposes of application of the provisions of this [act] relating to
enforcement of a choice of court agreement, means any case other than a case in which

(A) the parties are both exclusively residents of the same member country;

and

(B) the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that country; or

(2) for purposes of application of the provisions of this [act] relating to recognition and enforcement of a judgment, means any case in which the judgment was rendered in a country other than the member country in which recognition and enforcement is sought.

(h) “Judgment” means a court decision on the merits, however denominated, including a decree or order, and also a determination of costs or expenses relating to a decision on the merits, that may be recognized or enforced under this [act]. The term does not include an interim measure of protection.

(i) “Member country” means a country or regional economic integration organization that is a Contracting State to the Convention.

(j) “Non-exclusive choice of court agreement” means a choice of court agreement as defined in section (3)(a) that is not an exclusive choice of court agreement under section (3)(f).

(k) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(l) “Record” means information that is in writing or in any form of communication which renders the information accessible so that it may be used for subsequent reference.

Reporters’ Notes

1. Subsections 3(b), (d) and (e) are based on definitions in the Report.
2. Except with regard to choice of court agreements meeting the requirements of section 15 of this Act, this Act applies only to exclusive choice of court agreements. “Exclusive choice of court agreement” is defined in Article 3 of the Convention. Such agreements must meet five requirements: (1) there must be an agreement between two or more parties; (2) the agreement must be “concluded or documented” in a record; (3) the agreement must designate the courts of one country or one or more specific courts in one country to the exclusion of all other courts; (4) the designated courts must be the courts of a member country; and (5) the designation must be for the purpose of deciding disputes that have arisen or may arise in connection with a particular legal relationship. Report ¶93. The combination of the definitions of “choice of court agreement” and “exclusive choice of court agreement” in section 3 meet these requirements.

Subsection (3)(j) defines “non-exclusive choice of court agreement.” This definition is important for application of Article 22 of the Convention. The Report states that a non-exclusive choice of court agreement under Article 22 must satisfy four requirements: (1) it must be in the form required by Article 3(c) of the Convention (that is, it must be, in the language of the Act, “concluded or documented” in a record); (2) the parties must have consented to it (that is, it must be an “agreement”); (3) the chosen court must be designated for the purpose of deciding disputes that have arisen or may arise in connection with a particular legal relationship; and (4) the agreement must designate a court or the courts of one or more member countries. Report ¶242. For purposes of this Act, this means that a non-exclusive choice of court agreement must meet the requirements of subsection 3(a) defining “choice of court agreement,” but not meet the additional requirements of subsection 3(f) defining “exclusive choice of court agreement.”

3. Subsection 3(g) is based on Article 1(2)&(3) of the Convention.

SECTION 4. SCOPE.

(a) Except as otherwise provided in this section, this [act] applies to

(1) an exclusive choice of court agreement in an international case involving a civil or commercial matter; and

(2) a non-exclusive choice of court agreement in an international case involving a civil or commercial matter to the extent provided in section 11 of this [act].

(b) This [act] does not apply to an exclusive choice of court agreement if:

(1) any party to the agreement is an individual acting primarily for personal, family or household purposes; or

(2) the agreement relates primarily to an individual or collective contract of
(c) Subject to subsection (d), this [act] does not apply to the following matters:

1. the status and legal capacity of an individual;
2. family law matters, including matters relating to divorce, support, maintenance, property division, child custody and other rights and obligations arising out of marriage or a similar relationship;
3. wills, succession, and administration of estates;
4. bankruptcy and insolvency matters;
5. the carriage of passengers or goods;
6. marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;
7. antitrust matters;
8. liability for nuclear damage;
9. claims for personal injury brought by or on behalf of individuals;
10. tort claims for damage to real property and tangible personal property which do not arise from a contractual relationship;
11. interests in real property, including leasehold interests;
12. the validity, nullity, or dissolution of persons other than individuals, and the validity of the internal governance decisions of their governing authorities;
13. the validity of intellectual property rights other than copyright and related rights;
14. infringement of intellectual property rights other than copyright and related rights, except when infringement proceedings are brought for breach of a contract between the
parties relating to such rights, or could have been brought for breach of that contract;

(15) the validity of entries in public registers; and

(16) matters under the law of a member country that are analogous to those listed in this subsection.

(d) A proceeding involving a determination relating to a matter listed in subsection (c) is not excluded from the scope of this [act] if that determination is of a question merely preliminary to, or asserted as a defense in connection with, a determination relating to a non-excluded matter that is an object of the proceeding.

(e) This [act] does not apply to arbitration and related proceedings.

(f) Proceedings are not excluded from the scope of this [act] merely because a government or governmental agency, or other person acting for a government, is a party to the proceeding. Nothing in this [act] affects the privileges and immunities of governments or international organizations in respect of themselves and their property.

(g) This [act] does not apply to interim measures of protection. This [act] neither requires nor precludes the grant, refusal, or termination of interim measures of protection by a court of this state and does not affect whether a party may request, or a court of this state should grant, refuse, or terminate such measures.

(h) Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this [act] on the ground that the contract of insurance or reinsurance is related to a matter to which this [act] does not apply.

Reporters’ Notes

1. Subsection (a) excludes non-civil matters, including public law and criminal law matters. The Convention uses the phrase “civil or commercial” law matters because these two categories are regarded as separate and mutually exclusive categories in some legal systems. Art. 1 (1); Report, ¶49. This Act also uses that phrase for the same reason. In the U.S., a commercial
matter would be a subset of civil matters. With regard to determination of the meaning of these
terms, the Report states that “[l]ike other concepts used in the Convention, ‘civil or commercial
matters’ has an autonomous meaning: it does not entail a reference to national law or other
instruments.” Report ¶ 49.

2. Subsection (b)(1) excludes choice of court agreements when any of the parties to the
agreement is a consumer. It covers both an agreement between a consumer and a nonconsumer,
and one between two consumers. Art. 2(1)(a); Report ¶ 50.

3. Subsection (b)(2) excludes all choice of court agreements in employment contracts,
whether an individual contract between an employer and an employee or a collective contract of
employment between an employer and a group of employees or an organization such as a labor
union representing employees. Art. 2(1)b); Report ¶ 51.

4. Subsection (c) is based on Article 2(2) & (3), which exclude proceedings involving
certain subject matter from the scope of the Convention, but only when the matter is “an object
(the subject or one of the subjects) of the proceedings,” rather than “a preliminary question in
proceedings that have some other matter as their object/subject.” Report ¶ 52. Articles 2(3)
expressly states that “the mere fact that a matter excluded under paragraph 2 arises by way of
defense does not exclude proceedings from the Convention, if that matter is not an object of the
proceedings.”

The application of this distinction is illustrated by the following examples:

Example 1: A and B enter a contract that contains an exclusive choice of court provision.
A sues B for breach of contract. B asserts by way of defense that the contract is void because it
violates the antitrust laws. Although subsection (c)(7) excludes antitrust from the subject matter
covered by this Act, the dispute between A and B would be within the scope of this Act. The
primary object of the action is to determine the breach of contract claim asserted by A. The
principal issue before the court is whether judgment should be given against B for breach of
contract. That antitrust issue is merely a defense to B’s liability which must be determined as a
preliminary question to deciding the primary object of the action, whether A is entitled to recover
from B for breach of contract. See Report ¶ 63.

Example 2: Licensor licenses patent rights to licensee under a license that contains an
exclusive choice of court agreement. Subsequently, licensee stops making the royalty payments
required under the license. Licensor brings an action under the license to recover the unpaid
royalties. Licensee asserts that licensor’s patent is invalid as a defense to payment. Although
subsection (c)(13) excludes issues relating to the validity of a patent from the subject matter
covered by this Act, the dispute between Licensor and Licensee is within the scope of this Act.
The principle issue before the court is whether Licensor can recover its unpaid royalties under the
license. Although the court must decide whether Licensor’s patent is valid before it can make
that determination, the issue of patent validity is merely a preliminary question to deciding the
issue of Licensor’s right to its royalties under the license. See Report ¶ 77.

5. Subject matter under subsection (c) is excluded for various reasons. In some cases, the
parties may not have the right to dispose of the matter for themselves because the public interest or that of third parties is involved. In those cases, a particular court often will have exclusive jurisdiction that cannot be ousted by a choice of court agreement. In other cases, other multilateral legal regimes apply and thus the Convention is not needed. Further, exclusion of these areas removes the need to resolve questions of conflict between the Convention and these other regimes. Report ¶53.

6. Subsection (c)(1) is based on Article 2(2)(a) of the Convention. The language is almost identical. It excludes issues dealing with status and capacity of natural persons. The Report states that the Convention’s comparable exclusion “includes proceedings for divorce, annulment of marriage or the affiliation of children.” Report ¶54.

7. Subsection (c)(2) is based on Article 2(2)(b) & (c). It includes language from a similar exclusion in Section (b)(3) of the UFCMJRA. The Convention uses the phrase “maintenance obligations,” which is intended to include child support. Art. 2(2)(b); Report ¶55. The Act expressly lists “support,” which would include spousal and child support. The Convention uses the phrase “matrimonial property regimes,” which includes “the special rights that a spouse has to the matrimonial home in some jurisdictions.” Report ¶55. The Act uses the phrase “property division.” The phrase “similar relationships” covers relationships between unmarried couples that are given legal recognition. Report ¶55.

8. Subsection (c)(3) excludes matters relating to succession. Art. 2(2)(d); Report ¶55. The bracketed language is not included in the Convention, but is presumably was intended to be covered by the Convention term “succession.”

9. Subsection (c)(4) is based on Convention Article 2(2)(e), which excludes “‘insolvency, composition, and analogous matters.” The Convention term “composition” is intended to refer to procedures pursuant to which the debtor can enter an agreement with creditors “in respect of a moratorium on the payment of debts or on the discharge of those debts.” Report ¶56. The Convention phrase “analogous matters” “covers a broad range of other methods whereby insolvent persons or entities can be assisted to regain solvency while continuing to trade, such as Chapter 11 of the United States Federal Bankruptcy Code.” Report ¶56. This phrase is left out of the Act because the Drafting Committee decided at its November 2008 meeting to include a separate subsection (c)(16) stating that matters under member country laws analogous to those listed in subsection (c) also are excluded. The term “composition” is left out of the Act as a term that would not convey the intended meaning under U.S. law. The term “bankruptcy” is added, and would cover Chapter 11 proceedings.

10. The Report states that the Convention’s insolvency exclusion excludes proceedings from the scope of the Convention “if they directly concern insolvency.” Report ¶57. The Report gives the following hypothetical to explain the scope of the exclusion:

A (resident in State X) and B (resident in State Y) enter into a contract under which B owes A a sum of money. The contract contains a choice of court agreement in favor of the courts of State Z. A is then declared bankrupt as a result of proceedings in State X. The Convention would apply to any proceedings...
against B to recover the debt, even if they were brought by the person appointed to administer A’s bankrupt estate: provided that the appointment under the insolvency law of State X is recognized in State Z, that person would be standing in the shoes of A and would be bound by the choice of court agreement. However, the Convention would not apply to questions concerning the administration of the bankrupt estate – for example, the ranking of different creditors.

11. Subsection (c)(5) is the same as Convention Article 2(2)(f), which excludes contracts for the national and international carriage of passengers and goods by land, sea, air or any combination of the three. Report ¶58. This exclusion avoids the possibility of conflict with other conventions, such as the Hague Rules on Bills of Lading, which deal with this aspects of this area.

12. Subsection (c)(6) excludes five specific maritime matters – marine pollution; limitation of liability for maritime claims; general average; emergency towage; and emergency salvage. Art. 2(2)(g); Report ¶59. Other maritime matters, such as marine insurance, non-emergency towage and salvage, shipbuilding and ship mortgages and liens, are included. Report ¶59.

13. Subsection (c)(7) excludes antitrust law matters. The Convention version of this exclusion refers to “anti-trust (competition) matters” to take into account the fact different terms are used in different legal systems to refer to similar laws – what the U.S. refers to as antitrust law is called “competition law” in Europe. Art. 2(2)(h); Report ¶60. The exclusion is not intended to cover unfair competition law, such as that relating to misleading advertising or passing goods off as those of a competitor – presumably what would be referred to as unfair trade practices in the United States. Report ¶60.

14. The language of subsection (c)(8) is identical to the Convention language regarding exclusion of liability for nuclear damage. Art. 2(2)(l). Liability for nuclear damage is excluded because it is the subject of other conventions and because in some states, like the United States, that are not a party to a nuclear liability convention, a comprehensive scheme under internal law exists that requires a single collective procedure in order to have a uniform solution with regard to liability and an equitable distribution of a limited fund among those injured. Report ¶64.

15. The language of subsection (c)(9) is identical to the Convention language regarding exclusion of personal injury claims. Art. 2(2)(j). As the Report states, choice of court agreements are likely to be rare in this tort context. Report ¶65. The Report indicates that the exclusion is intended to cover not only physical injury but “nervous shock” – presumably what U.S. tort law would call “emotional distress” – even if not accompanied by physical injury. Report ¶65. The exclusion does not, however cover “humiliation or hurt feelings” such as those related to an invasion of privacy or defamation. Report ¶65.

16. The language of subsection (c)(10) is largely based on the Convention language. The Convention refers to “tort or delict claims” rather than just tort claims. Art. 2(2)(k). “Delict” is
the civil-law concept analogous to “tort” in common law legal systems. Report ¶66, n. 95. Only
tort claims for damage to tangible property that do not arise from a contractual relationship are

17. The comparable exclusion in the Convention to the exclusion in subsection (c)(11)
excludes “rights in rem in immovable property, and tenancies of immovable property” Art.
2(2)(l). The Convention does not define either “immovable property” or “rights in rem,” leaving
the definition of those terms to the internal law of each country. Brand & Herrup, page 66. The
language of subsection (c)(11) defines an “immovable” as “real property” and defines “rights in
rem” as “interests in real property.”

18. The exclusion in subsection (c)(11) reflects that fact that, as a matter of territorial
sovereignty, a country in which real property is situated customarily asserts exclusive jurisdiction
to determine who has interests in that real property; an order from a foreign court purporting to
determine these matters likely would not be given effect in the country in which the real property
is located as an intrusion on territorial sovereignty. See Brand & Herrup, page 66.

19. The Report states that “[t]he reference to rights in rem should be interpreted as
relating only to proceedings concerning ownership of, or other rights in rem in, the immovable,
not proceedings about immovables which do not have as their object/subject a right in rem.
Thus, it would not cover proceedings for damage to an immovable ... nor would it cover a claim
for damages for breach of a contract for the sale of land.” Report ¶67.

18. The bracketed language in subsection (c)(11) of the November 2008 draft referring to
real property related items has been deleted. The Drafting Committee decided that the issue of
the extent to which these items fell within the exclusion should be left for decision by the courts.
The Convention exclusion refers to “tenancies in immovables,” a concept the definition of
which, like that of “immovables,” is left to internal law. Brand & Herrup, page 66. Subsection
(c)(11) defines this term as “leasehold interests.”

19. The Report states two reasons for this exception: (1) in some countries “tenancies in
immovables” are subject to special legislation designed to protect the tenant and (2) in some
jurisdictions tenancies are considered rights in rem that would be covered under the first part of
the exclusion so all tenancies were included to provide consistent treatment without regard to
their characterization under a particular country’s internal law. Report ¶68.

20. Only proceedings directly involving “immovables” are excluded. For example, a
proceeding concerning rights and obligations of a seller and buyer under a contract for sale of a
business would not be excluded, even if the sale includes an undertaking to transfer a lease of the
business premises because the “immovables” issue would be involved only indirectly. Report
¶69. On the other hand, a proceeding between a landlord and tenant on the terms of the lease
would be excluded. Report ¶69.

21. The language of subsection (c)(12) is substantively the same as the language of
Article 2(2)(m) of the Convention, but has been rephrased using terminology more consistent
with that used in U.S. law. These matters were excluded because they often involve the rights of
third parties and in some countries are decided by courts that have exclusive jurisdiction with
regard to these issues. Report ¶70. As a general rule, a legal person comes into being because of
action of a particular territorial sovereign, its powers as a legal person are demarcated by the
rules of that territorial sovereign, and it passes out of existence in accordance with rules
established by that sovereign. Brand & Herrup, page 67. The matters excepted by subsection
(c)(12) thus are traditionally matters of exclusive jurisdiction of the state that created the legal

22. The exclusion in subsection (c)(12) is focused on matters relating to the internal
structure and operation of the legal person, and does not necessarily apply to the consequences of
decisions made by the legal person. Brand & Herrup, page 67.

23. The language of subsection (c)(13) is the same as the language of Article 2(2)(n) of
the Convention. Subsection (c)(13) excludes the issue of validity of intellectual property rights,
other than copyright and related matters. Thus, proceedings to revoke or for a declaration of
validity or invalidity of the excluded intellectual property rights are outside the scope of this Act.
Report ¶75. On the other hand, copyright and related rights are fully covered by this Act,
including with regard to proceedings to determine the validity of such rights. Report ¶72.

23. The term “related rights” in subsection (c)(13) refers to “rights in a specific use of an
existing work by someone other than the original author, and which use makes an additional
contribution to the existing work.” Brand & Herrup, page 68. For example, the writing of a song
gives rise to a right in copyright, while the rights a singer may have in a particular rendition of
the song is a ‘related right” under this Act. Brand & Herrup, page 68. “Related rights” include
rights of performers in their performances, rights of producers of sound recordings in their
recordings, and rights of broadcasting organizations in their radio and television broadcasts.
Report ¶73.

24. The exclusion under subsection (c)(13) only applies when the validity issue is a
primary object of the proceeding. When validity is raised merely as a preliminary matter rather
than as the primary object of the litigation, then the exclusion does not apply. Thus, proceedings
to enforce a licensing agreement with regard to a non-copyright intellectual property right would
not be outside the scope of this Act just because the defendant raises the invalidity of the
intellectual property right as a defense. Report ¶¶75 & 77.

On the other hand, if instead of raising invalidity as a defense, the defendant
counterclaimed for revocation of the intellectual property right, that counterclaim would be
excluded under subsection (c)(13) because the primary object of the counterclaim would be to
determine the validity of the right. Report ¶78. The fact the counterclaim was outside the scope
of this Act, however, would not alter the fact that the plaintiff’s claim for enforcement of the
license would be within this Act. Report ¶78.

25. This Act applies to contracts dealing with intellectual property rights, such as
licensing agreements, distribution agreements, joint venture agreements, agency agreements, and
agreements for the development of an intellectual property right. Report ¶76. Proceedings
brought under such contracts – for example, proceedings for payment of royalties owed under a
licensing agreement – are covered by this Act. Report ¶76

26. The language of subsection (c)(14) is identical to the language of Article 2(2)(o) of the Convention. As with the exclusion in subsection (c)(13), the exclusion applies only with regard to intellectual property rights other than “copyright and related rights.” For a discussion of the meaning of “related rights,” see note 23. In addition, the exclusion applies only when the infringement action could not have been brought as an action for breach of contract, whether or not it in fact was brought as a contract action. This latter condition greatly limits the scope of this exclusion. The only situations in which subsection (c)(13) will exclude subject matter from this Act are those in which the exclusive choice of court agreement applies to infringements that do not constitute a breach of the contract in which the exclusive choice of court agreement is contained or of any other contract between the parties, or where the parties concluded a choice of court agreement relating to an infringement that had already arisen and that was not related to any contract between the parties; such agreements will be rare. Report ¶79, n.109.

27. The language of subsection (c)(15) is identical to the language of Article 2(2)(p) of the Convention. Traditionally, the state that creates and maintains a public register has exclusive jurisdiction over proceedings concerning the validity of entries in that public register as an aspect of territorial sovereignty. Brand & Herrup, page 70. Therefore, issues relating to the validity of entries in public registers have been excluded from the scope of this Act.

28. The bracketed subsection (c)(16) found in the November 2008 draft has been deleted. The Drafting Committee decided at its November 2008 meeting that no declarations should be made under Article 21, which allows a country to add to the subject matters excluded from coverage by declaration when the country has a strong interest in not apply the Convention to a specific matter. The new subsection (c)(16) excludes from the scope of the Act matters that under the law of a member country are analogous to those listed in subsection (c) in recognition of the fact different terms may be used to describe similar concepts in the legal systems of the various member countries.

29. Subsection (d) excludes arbitration and related proceedings from the scope of this Act. This exclusion is intended to be interpreted broadly, and covers any proceedings in which the court gives assistance to the arbitral process, including deciding whether an arbitration agreement is valid; ordering parties to proceed to, or discontinue, arbitration proceedings; revoking, amending, recognizing, or enforcing arbitral awards; appointing or dismissing arbitrators; fixing the place of arbitration; or extending the time for making awards. Report ¶84. There currently is a functioning international regime with regard to arbitral proceedings, including the United Nations Convention on the Recognition and Enforcement of Arbitral Awards, and this Act is not intended to disturb that regime. Brand & Herrup, page 73. Once arbitration or related proceedings are raised in a case, the case falls outside the scope of this Act. See Brand & Herrup, page 73-74.

30. Subsection (e) is based on Article 2(5) & (6) of the Convention.

31. Subsection (f) is based on Article 7 of the Convention.
32. Subsection (g) is based on Article 17(1) of the Convention.

SECTION 5. EXCLUSIVE CHOICE OF COURT AGREEMENT AS INDEPENDENT AGREEMENT. An exclusive choice of court agreement that forms part of a contract must be treated as independent of the other terms of the contract. The validity of the exclusive choice of court agreement cannot be contested solely on the ground that the contract is not valid.

Reporters’ Notes

1. This section is based on Article 3(d) of the Convention.

SECTION 6. WHEN CHOICE OF COURT AGREEMENT DEEMED EXCLUSIVE. A choice of court agreement that designates the courts of one member country or one or more specific courts in one member country will be deemed exclusive unless the parties to the agreement expressly provide that the agreement is not exclusive.

Reporters’ Notes

1. This section is based on Article 3(b) of the Convention, and generally follows the Convention language.

SECTION 7. RESIDENCE OF AN ORGANIZATION. For purposes of this [act], a person other than an individual is considered to be a resident of any country:

(1) where it has its statutory seat;

(2) under the law of which it was incorporated or formed;

(3) where it has its central administration; or

(4) where it has its principal place of business.

Reporters’ Notes

1. Section 7 is based on Article 4(2) of the Convention.
2. Section 7 defines “residence” for entities other than natural persons. The concept of “residence” is important with regard to determining whether a case is an “international case” for purposes of determining the scope of application of this Act, as well as with regard to certain exceptions to recognition and enforcement. Report ¶118. The section states four possible residences for an organization, and it is possible for an organization to have a residence in more than one locations, or even in all four locations. Brand & Herrup, page 51.

3. “Statutory seat” (“siege statutaire”) is a civil law concept used in some civil law jurisdictions to determine the residence of organizations. The Report explains this concept as follows:

[T]his term does not refer to the corporation’s seat as laid down by some statute (legislation) but as laid down by the statut, the document containing the constitution of the company – for example, the articles of association. In the common law, the nearest equivalent is “registered office.” In practice, the State where the corporation has its statutory seat will almost always be the State under whose law it was incorporated or formed; while the State where it has its central administration will usually be that in which it has its principal place of business.

Report ¶123.

4. The Report states that “[a] State or a public authority of a State would be resident only in the territory of that State.” Report ¶117 n. 148.

5. The Committee decided at its November 2008 meeting to adopt the ULC definition of “person” rather than the Convention language “an entity or person other than a natural person.”

SECTION 8. DUTY OF CHOSEN COURT TO ACCEPT JURISDICTION.

(a) Except as otherwise provided in this section, a chosen court of this state shall accept jurisdiction over the dispute.

(b) A chosen court of this state shall refuse to accept jurisdiction to decide a dispute to which an exclusive choice of court agreement applies if:

(1) the exclusive choice of court agreement is null and void under the law of this state; or

(2) assumption of jurisdiction by the chosen court would violate

(A) jurisdictional limits placed on the chosen court by this state relating to
subject matter or amount in controversy; or

(B) venue requirements or other rules of this state regarding internal allocation of jurisdiction among its courts.

[(c) A chosen court of this state does not have subject matter jurisdiction if, except for the choice of that court, there is no connection between this state and the parties or the dispute.]

(d) A chosen court may not decline to exercise jurisdiction over a dispute under the doctrine of *forum non conviens* or otherwise because the dispute should be decided in the courts of another state or country.

(e) A chosen court may transfer a case to another court pursuant to a law of this state permitting such transfer. In determining a discretionary transfer, the court shall give due consideration to the choice of court of the parties.

**Reporters’ Notes**

1. Section 8 is based on Article 5 of the Convention.

2. One of the more difficult issues for the Committee has been the question of a chosen court’s obligation to hear a case that has no relation to the state. While some states may be interested in hearing such cases, other states may not wish to do so, or may not be able to do so because of state constitutional restrictions. Article 19 of the Convention allows a party to the Convention to make a declaration giving its courts discretion to decline jurisdiction over unrelated disputes. One alternative would be for the United States to make this declaration. Bracketed subsection (c) presents another alternative. It treats the issue as one of subject matter jurisdiction, rather than one within the discretion of the court. This language would be used in lieu of an Article 19 declaration. A state that does not wish to have its courts hear unrelated cases could adopt this bracketed language, thereby carving unrelated cases out of the subject matter jurisdiction of its state courts, and, thus, under subsection (b), out of its obligation to hear those cases under this Act. The Committee considered another version of the bracketed language that would allow states to list certain circumstances under which its courts would have subject matter jurisdiction over unrelated cases, but the Committee decided at its February 2009 meeting that the possibility of a state creating exceptions could be covered by a legislative note. The Committee continues to discuss this issue.

3. Subsection (e) is derived from Article 5(3)(b) of the Convention. In addition to
transfer pursuant to state law, Article 5 of the Convention would permit removal to a federal
court. Report ¶140 n.176. Because that removal would be governed by federal law, however, it
is not mentioned in subsection (e).

SECTION 9. DUTY OF COURT NOT CHOSEN TO DECLINE JURISDICTION.

A court of this state which is neither the chosen court nor a court to which the chosen court has
transferred the action under section 8 shall suspend or dismiss proceedings to which an exclusive
choice of court agreement applies unless the court determines that:

(1) the agreement is null and void under the law of the jurisdiction of the chosen court;

(2) a party to the agreement lacked capacity to enter into the agreement under the law of
this state;

(3) giving effect to the agreement would lead to a manifest injustice or would be
manifestly contrary to the public policy of this state or of the United States;

(4) for exceptional reasons beyond the control of the parties, the agreement cannot
reasonably be performed; or

(5) the chosen court has declined to hear the case.

Reporters’ Notes

1. Section 9 is based on Article 6 of the Convention.

SECTION 10. RECOGNITION OF JUDGMENT OF CHOSEN COURT OR
COURT TO WHICH CASE HAS BEEN TRANSFERRED.

(a) Except as otherwise provided in this Act, a court of this state shall recognize a
judgment rendered by a chosen court or a court of a member country to which the chosen court
transferred the case pursuant to section 8.

(b) Without prejudice to such review as is necessary for the application of the provisions
of this Act regarding recognition, the court shall not review the merits of the judgment given by
the court of origin. The court shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.

(c) The court shall recognize a judgment under this [act] only if it has effect between the parties in the country of origin, and shall enforce the judgment only if it is enforceable in the country of origin.

(d) The court may postpone or refuse to recognize or enforce a judgment if the judgment is the subject of review in the state of origin or if the time for seeking review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

(e) If the judgment is the judgment of a court of a member country to which the chosen court transferred the case pursuant to section 8, and the chosen court has discretion with regard to the decision to transfer, then recognition may be refused against a party who objected to the transfer in a timely manner in the country of origin.

**Reporters’ Notes**

1. The Convention places an obligation on a member country to both recognize and enforce a judgment rendered by the chosen court, with certain exceptions. The Report gives the following description of the difference between the concept of recognition and that of enforcement:

Recognition means that the court addressed gives effect to the determination of the legal rights and obligations made by the court of origin. For example, if the court of origin held that the plaintiff had, or did not have, a given right, the court addressed accepts that this is the case. Enforcement means the application of the legal procedures of the court addressed to endure that the defendant obeys the judgment given by the court of origin. Thus, if the court of origin rules that the defendant must pay the plaintiff 1000 Euros, the court addressed will ensure that the money is handed over to the plaintiff. Since this would be legally indefensible if the defendant did not owe 1000 Euros to the plaintiff, a decision to enforce the judgment must logically be preceded or accompanied by the recognition of the judgment. In contrast, recognition need not be accompanied or followed by enforcement. For example, if the court of origin held that the defendant did not owe any money to the plaintiff, the court addressed may simply recognize this finding. Therefore, if the plaintiff sues the defendant again on the same claim before the court addressed, the recognition of the foreign judgment will be enough
to dispose of the case.

Report ¶170.

2. Section 10(b) is based on Article 8(2) of the Convention, and generally tracks Convention language.

3. Section 10(c) is based on Article 8(3) of the Convention. It requires that the judgment be effective in the country of origin as a prerequisite to the recognition of the judgment in this state, and that it be enforceable in the country of origin as a prerequisite to its enforcement in this state. A judgment has effect in the country of origin if it is legally valid and operative in that country as a valid determination of the parties’ rights and obligations. Report ¶171. If the judgment does not have effect in the country of origin, then it should not be given effect in this state through recognition; similarly, if the judgment ceases to have effect in the country of origin the judgment should not continued to be recognized in this state. Report ¶171. Section 10(c) and Article 8(3) of the Convention also provide that If a judgment is not enforceable in the country of origin – for example, because enforcement has been suspended in the country of origin pending appeal – then the judgment should not be enforced in this state. Report ¶172.

4. Section 10(d) is based on Article 8(4) of the Convention, and generally tracks its language. Section 10(d) gives the court discretion to deny recognition or enforcement if the judgment is either under review in the country of origin or the time for review in that country has not expired. Report ¶173. Thus, even though under the law of the country of origin appeal of the judgment would not suspend its effectiveness or enforceability, and therefore section 10(c) would not apply, a court of this state, in its discretion, nevertheless could postpone or refuse recognition or enforcement under 10(d).

5. Section 10(e) is based on Article 8(5) of the Convention. It provides a special discretionary ground upon which the court may deny recognition and enforcement against a party who opposed the transfer when the judgment is the judgment of a court to which the chosen court made a discretionary transfer. Report ¶175.

SECTION 11. EXCEPTIONS TO RECOGNITION OF A JUDGMENT. A court of this state may refuse recognition of a judgment of a chosen court of a member country if:

(a) the court determines that the exclusive choice of court agreement was null and void under the law of the country of origin, unless the chosen court has determined that the agreement is valid;

(b) a party to the agreement lacked the capacity to conclude the agreement under the law of this state;
(c) the document instituting the proceedings in the chosen court or an equivalent
document including the essential elements of the claim was not notified to the defendant in
sufficient time and in such a way as to enable the defendant to arrange for a defense, unless the
defendant entered an appearance in the chosen court to present his case without contesting
notification, provided the law of the country of origin permits notification to be contested;
(d) the defendant in the proceeding in the chosen court was given notice in this state of
the proceeding in the chosen court in a manner incompatible with fundamental principles of this
state concerning the service of documents;
(e) the judgment was obtained by fraud in connection with a matter of procedure;
(f) recognition of the judgment would be manifestly incompatible with the public policy
of this state or of the United States, including situations where the specific proceedings leading to
the judgment in the chosen court were incompatible with fundamental principles of procedural
fairness of this state or of the United States;
(g) the judgment is inconsistent with a judgment of a court of this state in a dispute
between the same parties; or
(h) the judgment is inconsistent with an earlier judgment rendered by a court of another
jurisdiction between the same parties on the same cause of action, if the earlier judgment fulfils
the conditions necessary for its recognition under the law of this state other than this [act].

Reporters’ Notes

1. Subsection 11(c) is based on Article 9(c)(I) of the Convention, and largely tracks the
Convention language.

2. The language of subsection 11(f) follows the language of Article 9(e), except for the
addition of the phrase “of the United States.” That phrase, which is found in UFCMJRA
subsection 4((c)(3), makes clear that, under the supremacy clause of the U.S. Constitution, the
public policy of this state includes the public policy of the United States.
3. Subsection 11(d) is based on Article 9(c) of the Convention. It deals with the situation in which the defendant to the original proceedings in the chosen court is given notice of those proceedings in this state in a manner that this state would view as incompatible with its fundamental principles regarding service of process. See Report ¶187.

4. Subsection 11(g) is based on Article 9((f) of the Convention. This exception provides that a judgment of this state that is inconsistent with the judgment of the chosen court prevails, whether or not the inconsistent judgment is rendered by this state before or after the judgment of the chosen court. Report ¶192. For this provision to apply, the parties to the inconsistent judgment must be the same, but it is not necessary that the cause of action be the same. Report ¶192.

5. Subsection 11(h) is based on Article 9((g) of the Convention, and largely tracks the Convention language. Subsection 11(h) deals with the situation when the competing judgments both were rendered by the courts of another jurisdiction. In that situation, the court may deny recognition to the chosen court judgment in favor of an earlier inconsistent judgment rendered in the other jurisdiction between the same parties on the same cause of action.

6. The language of subsection 11(h) deals with two issues not expressly addressed by the Convention in Article 9(g). First, what does the language in the Convention stating that the judgment of the other jurisdiction must be one that “fulfils the conditions necessary for its recognition in the requested State” mean? If the requirements for recognition in the requested jurisdiction (“this state”) include the Convention, then it seems such a judgment will never comply because it is not the judgment of a chosen court. Subsection 9(h) resolves this ambiguity in the Convention by providing that the relevant law of this state is law “other than this act.”

Second, Article 9(g) provides that the inconsistent judgment must be one of “another State.” In a federalist State, such as the United States, the Convention language seems to leave a lacuna in the law – what if the inconsistent judgment is neither one of “this state” nor one of a foreign country, but rather is one of another state of the United States? Section 11(h) resolves this ambiguity by providing that the inconsistent judgment must be that of “another jurisdiction,” thus including inconsistent judgments of another U.S. state within the rule of subsection 11(h). This resolution of the issue seems consistent with Article 25(c) of the Convention, which provides that “any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit.” It also is consistent with full faith and credit principles applicable between states of the United States.

This second issue also is raised by the Convention language in Article 11(f), which refers to an inconsistent judgment of the “requested State.” Subsection 9(g) resolves this issue by providing that the inconsistent judgment must be one of “a court of this state” (small “s”), rather than a court of the United States (big “S”). Again, this interpretation seems consistent with Article 25(c).

It should be noted that, while interpreting “State” as including states of the United States in subsection 11(h) gives that subsection a broader reach, the same interpretation in subsection 11(g) provides a narrowing interpretation of that section.
Note: These issues were discussed by the Committee at its November 2008 meeting.

SECTION 12. PRELIMINARY QUESTIONS.

(a) Where a matter excluded from the scope of this [act] under section 3(c) arose as a
determination merely preliminary to, or asserted as a defense in connection with, a determination
relating to a non-excluded matter that is an object of the proceeding, the ruling on the preliminary
question may not be recognized under this [act].

(b) Except as otherwise provided in subsection (c), recognition of a judgment may be
refused to the extent that the judgment was based on a ruling on a matter excluded from the
scope of this [act] under section 3(c).

(c) If the ruling on a matter excluded under section 3(c) was a ruling on the validity of an
intellectual property right other than copyright or a related right, recognition of the judgment may
be refused or postponed only if:

(1) the ruling is inconsistent with a judgment or decision of a competent authority
under the law of which the intellectual property right arose; or

(2) proceedings concerning the validity of the intellectual property right are
pending in the country under the law of which the intellectual property right arose.

Reporters’ Notes

1. Subsection 12(a) is based on Article 10 (1) of the Convention. Neither a ruling on a
matter excluded from the coverage of this [act] under section 3, or such an issue raised as a
preliminary question necessary to the court’s ultimate decision of an issue within the scope of
this Act, is given preclusive effect under this Act, although the court may recognize such rulings
under other law. See Report ¶194.

2. Subsection 12(b) is based on Article 10(2). It provides a discretionary ground for
denying recognition to a judgment to the extent the judgment is based on an excluded matter. It
is not concerned with non-recognition of rulings on preliminary questions (which is dealt with in
subsection 12(a)), but rather with recognition of the judgment resulting from the proceeding in
which such rulings were made. Report ¶ 197.
3. Subsection 12(c) is based on Article 10(3) of the Convention. It provides a special rule with regard to recognition of judgments based on a preliminary ruling regarding the validity of an intellectual property right other than copyright or a related right. Report ¶198.

SECTION 13. NON-COMPENSATORY DAMAGES. Recognition of a judgment may be refused to the extent that the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered, taking into account the extent to which damages not otherwise compensatory should be considered compensatory because they compensate a party for costs and expenses relating to the proceedings.

Reporters’ Notes
1. Section 13 is based on Article 11 of the Convention.

SECTION 14. RECOGNITION OF JUDGMENTS BASED ON CONTRACTS OF INSURANCE. Recognition of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect of:

(1) a matter to which this [act] does not apply; or

(2) an award of damages to which section 13 might apply.

Reporters’ Notes
1. Section 14 is based on Article 17(2) of the Convention, and closely tracks its language.

SECTION 15. RECOGNITION OF JUDGMENT RENDERED BY COURT CHosen IN NON-EXCLUSIVE CHOICE OF COURT AGREEMENT.

(a) Except as otherwise provided in subsection (b), a court of this state shall recognize and enforce a judgment rendered by the court of another member country designated in a non-exclusive choice of court agreement in the same manner and to the same extent that it would recognize and enforce a judgment rendered by a chosen court of a member country designated in
an exclusive choice of court agreement under this [act], if that member country has made a
reciprocal declaration pursuant to Article 22 of the Convention.

(b) A judgment of a member country court designated in a non-exclusive choice of court
agreement shall be recognized under this [act] only if:

(i) there is no other existing judgment between the same parties on the same cause
of action given by another court before which proceedings could have been brought in
accordance with the non-exclusive choice of court agreement;

(ii) there is no other proceeding pending between the same parties on the same
cause of action in any other court before which proceedings could have been brought in
accordance with the non-exclusive choice of court agreement; and

(iii) in the situation where another proceeding that was pending between the same
parties on the same cause of action in any other court has been dismissed before final judgment,
the member country court of origin was the court first seized.

Reporters’ Notes

1. Section 15 is based on the language of Article 22. It assumes that the United States
will take the declaration permitted under Article 22 of the Convention, which provides for
reciprocal recognition and enforcement of judgments rendered by the courts of member countries
chosen in a non-exclusive choice of court agreement in certain circumstances.

2. Subsection 15(a) provides that when a reciprocal declaration has been made under
Article 22 of the Convention, a court of this state “shall recognize and enforce a judgment
rendered by the court of another member country designated in a non-exclusive choice of court
agreement in the same manner and to the same extent that it would recognize and enforce a
judgment rendered by a chosen court of a member country designated in an exclusive choice of
court agreement under this [act].” Thus, a court of this state has the same obligation to recognize
and enforce such judgments as it does to recognize and enforce judgments of a chosen court
under an exclusive choice of court agreement, and recognition and enforcement of such
judgments is subject to all the requirements, limitations, and exceptions applicable to
recognition and enforcement of judgments of a chosen court under an exclusive choice of court
agreement, including the scope provisions of section 2 of the Act, and the requirements for
recognition and exceptions to recognition contained in this [act]. In addition, recognition and
enforcement of such judgments is subject to the additional exceptions stated in subsection 15(b).
See Report, ¶¶243, 245.

4. Subsection 15(b) states grounds for denying recognition and enforcement applicable only to a judgment rendered by a member country designated in a non-exclusive choice of court agreement. It provides that “recognition or enforcement is not mandatory when there exists a judgment given by any other court before which proceedings could be brought in accordance with the non-exclusive choice of court agreement or where there exists a proceeding pending between the same parties in any other such court on the same cause of action, regardless of whether such proceedings were commenced before or after those before the chosen court or whether such judgment was given before or after that of the chosen court.” Report ¶245. Section 15(c)(iii) deals with the situation in which there were proceedings before another court that did not result in a final judgment and are not still pending. In that situation, the member country court of origin must have been the first seized with jurisdiction over the action. Report ¶251.

SECTION 16. DOCUMENTS TO BE PRODUCED IN CONNECTION WITH REQUEST FOR RECOGNITION.

(a) A party seeking recognition of a judgment under this [act] shall produce:

(1) a complete and certified copy of the judgment;

(2) the choice of court agreement, a certified copy of that agreement, or other evidence of its existence;

(3) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings in the chosen court or an equivalent document was notified to the defaulting party;

(4) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the country of origin; and

(5) in the case of a judicial settlement under section 18, a certificate of the court of the country of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the country of origin.

(b) If the terms of a judgment for which recognition is sought are not sufficient for the court to verify whether the conditions of this [act] have been complied with, the court may
require the production of any documents necessary to show compliance.

(c) An application for recognition of a judgment may be accompanied by a document issued by a court or an officer of a court of the country of origin, in the form recommended and published by the Hague Conference on Private International Law.

(d) If the documents required to be produced under this section are not in English, they must be accompanied by a certified translation into English.

(e) All documents forwarded or delivered under this [act] are exempt from legalization or any analogous formality, including Apostille.

Reporters’ Notes

1. Section 16 is based on Article 13 of the Convention, except for subsection (e), which is based on Article 18. The section tracks the language of the Convention.

SECTION 17. ENFORCEMENT OF JUDGMENT RECOGNIZED BY THIS STATE.

(a) If a court of this state recognizes a judgment rendered by a court of a member country pursuant to this [act], upon request of the party in whose favor the judgment was granted, the court shall enforce the judgment in the same manner and to the same extent as a judgment rendered in this state.

(b) A judgment shall be enforced in this state only if it is enforceable in the country of origin.

Reporters’ Notes

1. Subsection 17(a) is based on Article 8(1) of the Convention and section 7 of the UFCMJRA.

2. Subsection 17(b) is based on Article 8(3) of the Convention.
SECTION 18. JUDICIAL SETTLEMENTS (TRANSACTIONS JUDICIAIRES).

(a) A court of this state shall enforce a judicial settlement in the same manner as a judgment under this [act] if:

(1) the judicial settlement has been approved by a chosen court of a member country or concluded before that court in the course of proceedings;

(2) the settlement is enforceable in the same manner as a judgment in the country of origin; and

(3) the settlement meets the requirements for recognition and enforcement of a judgment under this [act].

(b) A court shall not give a judicial settlement preclusive effect through collateral estoppel, issue preclusion, or otherwise.

Reporters’ Notes

1. Section 18 is based on Article 12 of the Convention.

2. The concept of “judicial settlement” does not exist in common law systems. The Report states:

   In France and other civil law countries they are contracts concluded before a judge by which the parties put an end to litigation, usually by making mutual concessions. Parties submit their agreement to the judge, who records it in an official document. Such agreements usually have some, or even all, of the effects of a final judgment. A judicial settlement is different from a consent order in the common law sense (an order made by the court with the consent of both parties), since a consent order is a judgment and may be recognised and enforced as such under Article 8 of the Convention. On the other hand, a judicial settlement is different from an out-of-court settlement, since it is made before a judge, puts an end to the proceedings and is usually enforceable in the same manner as a judgment. For these reasons, a special provision is devoted to it in the Convention.

Report ¶207.

3. Although section 18(a) provides for the enforcement of a judicial settlement meeting the requirements established there in the same manner as a judgment under this [act], section 18(b) makes it clear that judicial settlements are not given the same effect as a judgment recognized.
under this [act]. Unlike a judgment, which is given preclusive effect once recognized, judicial settlements have no preclusive effect.

4. The following examples illustrate the application of section 18.

Example 1. A and B enter a contract with an exclusive choice of court clause selecting the courts of France to determine disputes under the contract. Subsequently, A sues B in a French court seeking 1000 Euros he asserts is due under the contract. A and B then entered into a judicial settlement pursuant to which B agrees to pay A 800 Euros. B fails to pay the 800 Euros and A brings proceedings to enforce the judicial settlement in this state. Assume that the United States and France are both parties to the Convention. If the judicial settlement meets the requirements for enforcement under section 18(a), then it may be enforced in a court of this state.

Example 2. Assume the same facts as Example 1, except that B pays the 800 Euros pursuant to the judicial settlement without the need for enforcement proceedings. If A nevertheless brings a new action for the remaining 200 Euros, B cannot ask a court in this state to recognize the judicial settlement as precluding the action.

See Report ¶¶ 208, 209.

SECTION 19. SEVERABILITY. A court of this state shall recognize or enforce a severable part of a judgment if recognition or enforcement of only that part is applied for or only part of the judgment is capable of being recognized and enforced under this [act].

Reporters’ Notes

1. Section 19 is based on Article 15 of the Convention, and tracks its language.

SECTION 20. PROCEDURE FOR RECOGNITION OF JUDGMENT.

(a) If recognition of a judgment is sought under this [act] as an original matter, the issue of recognition must be raised by bringing an action seeking recognition of the judgment.

(b) If recognition of a judgment is sought under this [act] in a pending action, the issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

Reporters’ Notes

1. This section is based on section 6 of the UFCMJRA.
SECTION 21. STATUTE OF LIMITATIONS APPLICABLE TO RECOGNITION PROCEEDINGS. An action to recognize a judgment under this [act] must be commenced within the time during which the judgment has effect between the parties in the country of origin.

Reporters’ Notes

1. This section is based in part on section 9 of the UFCMJRA.

SECTION 22. STAY OF PROCEEDINGS PENDING APPEAL OF JUDGMENT.

If a party establishes that an appeal of a judgment of a chosen court is pending or will be taken in the country of origin, the court may stay any proceedings in this state with regard to recognition or enforcement of the judgment until the appeal is concluded, the time for appeal expires with no appeal having been taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Reporters’ Notes

1. Section 22 is based on Section 8 of the UFCMJRA.

2. Article 14 of the Convention provides that the procedures for recognition and enforcement are governed by the law of the requested State unless the Convention provides otherwise. The Convention contains no provision with regard to stay of recognition or enforcement proceedings. This section provides for a procedure similar to that available with regard to recognition of foreign country money judgments under the Uniform Foreign Country Money Judgment Recognition Act.

SECTION 23. INTERNATIONAL CHARACTER; UNIFORMITY OF INTERPRETATION.

In applying and construing this [act], consideration shall be given both to its character as a law implementing an international convention and to its character as a uniform law, and to the need to promote uniformity of interpretation with respect to its subject matter among the states that enact it, and among member countries to the convention that it implements.

Reporters’ Notes

1. Section 23 is based on the standard ULC language and Article 23 of the Convention.
2. The Report states that the uniformity provision of Article 23 requires courts to interpret the Convention in an international spirit so as to promote uniformity of application. Where reasonably possible, therefore, foreign decisions and writing should be taken into account. It should also be kept in mind that concepts and principles that are regarded as axiomatic in one legal system may be unknown or rejected in another. The objectives of the Convention can be attained only if all courts apply it in an open-minded way.

Report ¶256. As the implementing legislation for the Convention in this state, this Act should be interpreted in a similar fashion.

SECTION 24. SAVINGS CLAUSE. This [act] does not prevent the enforcement of a choice of court agreement not within the scope of this [act] or recognition and enforcement of a judgment not within the scope of this [act] under principles of comity or otherwise.

Reporters’ Notes

1. Section 24 is based in part on Section 11 of the UFCMJRA.

SECTION 25. TRANSITION PROVISIONS; EFFECTIVE DATE.

(a) This [act] shall apply to an exclusive choice of court agreement that designates a court or courts of this state as the chosen court if the parties concluded the exclusive choice of court agreement after entry into force of the Convention in the United States.

(b) This [act] shall not apply to proceedings filed in a court of this state that is not the chosen court unless

(i) the Convention entered into force in the country of the chosen court before the parties concluded the exclusive choice of court agreement; and

(ii) the proceedings in this state were commenced after entry into force of the Convention in the United States.

(c) This [act] takes effect ... .

Reporters’ Notes
1. Subsections (a) and (b) are based on Article 16 of the Convention. Article 16 provides that the Convention applies to exclusive choice of court agreements concluded after its entry into force for the country of the chosen court, but does not apply to proceedings instituted before its entry into force with respect to the country of the court seized. When proceedings are filed in the country of the chosen court, the first part of this rule applies – the relevant inquiry is whether the parties entered into the exclusive choice of court agreement after the date on which the Convention entered into force with regard to the country of the chosen court. When proceedings are instead filed in another country – the country of the “court seized” – then both parts of the rule become relevant. Proceedings may be filed in another country in two situations under the Act –

(1) when a party to the exclusive choice of court agreement files an action covered by the exclusive choice of court agreement in a court of a country other than that of the chosen court or

(2) when a party files an action for recognition and enforcement of a judgment of the chosen court in the courts of another country. In these situations, the exclusive choice of court agreement must have been concluded after the Convention’s entry into force in the country of the chosen court, and the proceedings in the other country must have been filed after the Convention entered into force for that other country. Report ¶¶218, 219. The language of this section differs somewhat from the language of Article 16 because of the need to state the transitions rules in the specific context of courts of a state of the United States. The substance of the provision, however, is intended to be the same as that of Article 16 of the Convention.

2. The application of subsections (a) and (b) is illustrated by the following examples:

**Example 1:** A and B entered into an exclusive choice of court agreement on February 3, 2011 selecting the courts of New York as their exclusive forum. The Convention enters into force in the United States on July 1, 2011. The New York legislature passes this Act, with an effective date of February 1, 2011. A files an action in New York state court on March 1, 2011. This Act will not apply to the parties’ exclusive choice of court agreement because the Convention had not yet entered into force in the United States when the exclusive choice of court agreement was concluded. Therefore, New York will not be under an obligation under this Act to hear the case. See Report, ¶220, Example 1. Whether the New York court would hear the case would be determined by other law of New York.

**Example 2:** Assume the same facts as in Example 1, except that the parties had entered into the exclusive choice of court agreement on July 2, 2011. Because the exclusive choice of court agreement would have been entered into after the Convention entered into force with regard to the United States, then this Act would apply and the New York state court would be under an obligation to hear the case under this Act.

**Example 3:** A and B entered into an exclusive choice of court agreement selecting the courts of London, England on February 3, 2011. The Convention enters into force in the United States on January 1, 2011. The Convention enters into force in the United Kingdom on August 1, 2011. The New York legislature passes this Act, with an effective date of February 1, 2011. B files an action in New York state court on July 15, 2011. This Act will not apply to the parties’ exclusive choice of court agreement because, the exclusive choice of court agreement was concluded before the Convention entered into force in the United Kingdom, the country of the chosen court. This will be the result even though the exclusive choice of court agreement was
concluded and the proceedings were filed in New York after the Convention had entered into force with regard to the United States. When the question is applicability of the Act to a proceeding filed in a court in a country other than that of the chosen court, both subsection (a) and subsection (b) apply. Therefore, the New York state court will not have an obligation under this Act to dismiss the proceedings filed by B. Whether the New York court would dismiss the proceedings in favor of the chosen forum would be determined by other law of New York.

**Example 4:** Assume the same facts as in Example 3, except that the Convention enters into force with regard to the United Kingdom on January 1, 2011 and with regard to the United States on August 1, 2011. The result would be the same as in Example 3 because, although in this example the exclusive choice of court agreement was concluded after the Convention entered into force with regard to the country of the chosen court, the proceeding was commenced in the New York court before the Convention entered into force with regard to the United States. See Report ¶220, Example 2.

**Example 5:** A and B entered into an exclusive choice of court agreement on February 3, 2010 selecting the courts of London, England as their exclusive forum. Assume that this date is after the date on which the Convention entered into force with regard to the United Kingdom. A obtained a judgment against B in the chosen court in London. The New York legislature passes this Act with an effective date of February 1, 2011. A files an action for recognition and enforcement of the London judgment in New York state court on March 1, 2011. The Convention enters into force with regard to the United States on July 1, 2011. This Act will not apply to A’s action for recognition and enforcement because that action was filed before the Convention entered into force in the United States. Therefore, the New York state court will not be under an obligation under this Act to recognize and enforce the London court judgment. Whether the London court judgment would be entitled to recognition and enforcement would be determined by the other law of New York.

**Example 6:** Assume the same facts as in Example 5, except that the Convention enters into force with regard to the United States on February 15, 2011. Because the Convention had entered into force in the United Kingdom -- the country of the chosen court -- when the parties concluded their exclusive choice of court agreement, and had entered into force in the United States -- the country of the court seized -- when A filed the action seeking recognition and enforcement of the London judgment in the New York state court, this Act will apply to A’s action for recognition and enforcement, and the New York state court will be under an obligation to recognize and enforce the London judgment in accordance with this Act. See Report ¶220, Example 2.

3. A convention enters into force with regard to the United States at the time designated in the convention after the time when the President deposits the instrument of ratification with the depositary designated in the convention, if the convention also is in force internationally. A convention enters into force internationally at the time designated in the convention. If the United States deposits its instrument of ratification before the convention is in force internationally, then the convention enters into force with regard to the United States at the time that it enters into force internationally. **American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States** §312 cmt. j. Article 31 of the Convention provides that the
Convention enters into force internationally “on the first day of the month following the expiration of three months after deposit of the second instrument of ratification, acceptance, approval or accession” to the Convention. For countries becoming parties to the Convention after it enters into force internationally, the Convention enters into force “on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession.” Art. 31(2)(a).

4. Section 25(c) is based on Section 12 of the UFCMJRA.