

**PROPOSITION DE L'ORGANE NATIONAL DU GOUVERNEMENT DU BRÉSIL
RELATIVE A UN PROJET DE CONVENTION SUR LA COOPERATION POUR LA
PROTECTION DES TOURISTES ET VISITEURS ETRANGERS,
RAISONNEMENT ET FORMULAIRE DE PLAINTE MULTILINGUE**

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**PROPOSAL BY THE NATIONAL ORGAN OF THE GOVERNMENT OF BRAZIL
ON A DRAFT CONVENTION ON CO-OPERATION IN RESPECT OF THE
PROTECTION OF TOURISTS AND VISITORS ABROAD,
ACCOMPANIED BY A JUSTIFICATION AND A MULTILINGUAL COMPLAINT FORM**

*Document préliminaire No 13 d'avril 2014 à l'attention
du Conseil d'avril 2014 sur les affaires générales et la politique de la Conférence*

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of the Council of April 2014 on General Affairs and Policy of the Conference*

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PROPOSAL BY THE NATIONAL ORGAN OF THE GOVERNMENT OF BRAZIL

**DRAFT CONVENTION ON CO-OPERATION IN RESPECT OF THE
PROTECTION OF TOURISTS AND VISITORS ABROAD – ENGLISH VERSION**

Brazilian Proposal – April 2013

**Draft Convention on Cooperation in respect of Tourists and Visitors Abroad
English Version and Complaint Form in English, French, Spanish and Portuguese
French and Spanish Versions
- Complaint Forms in Chinese, Russian and Japanese**

**DRAFT CONVENTION ON COOPERATION IN RESPECT OF THE
PROTECTION OF TOURISTS AND VISITORS ABROAD**

The States signatory to the present Convention,

NOTING the development of global tourism and its economic and social role, with benefits for all States involved, and considering that such foreign tourists and visitors as consumers contribute to strengthening the tourism sectors and the economic development in all States,

RECOGNIZING that foreign tourists should not be discriminated and should have access to justice and to administrative assistance in both the country of origin and of destination, in order to maintain their private rights,

CONSCIOUS that this foreign tourist may need special information and help in foreign languages on legal issues and consumer law in the country visited, and determined to ensure that these foreign tourists will be able to benefit of the already consumer protection system in place in all States and regions, avoiding costly and inefficient cross-border litigations in consumer issues,

DESIRING to facilitate international access to justice and cooperation also in small claims courts in consumer topics, as well as to address the joint efforts carried out by national consumer agencies and enforcement authorities that may be needed.

RECOGNIZING the need to establish a global network of consumer agencies and enforcement authorities able to provide assistance to foreign tourists, and convinced of the positive impact of Central Authorities in organizing and providing assistance and information in Contracting States, taking into account the UN Guidelines for Consumer Protection from 1985 (1999) and the Global Code of Ethics for Tourism (UN General Assembly Resolution 56/ 212, of 21 December 2001),

HAVE AGREED upon the following provisions -

CHAPTER I – OBJECTIVE AND SCOPE OF APPLICATION

Article 1 – Objective

1. This Convention lay down the conditions under which the Central Authority and the competent authorities in the Contracting States should cooperate with each other and facilitate the access to justice and to administrative help for foreign tourists.

2. This Convention establishes a network of authorities responsible for monitoring and enforcing the application of the legislation concerning consumer and tourist protection, aiming to ensure compliance with the legislation of the visited State ("the receiving State") and to facilitate the solution for breaches or infringements of the legislation in the receiving State, the access to Justice for foreign tourists also for small claims in this State, as well as the use of the documents produced at administrative complaints made in other Contracting States.

3. This Convention also lays down the conditions under which the competent authorities in the Contracting States designated as responsible for the enforcement of the laws that protect consumers' interests shall also cooperate with each other in order to ensure compliance with those laws, with international tourist protection standards and special regional and international legal instruments in order to enhance the protection of consumers' and tourists' economic and safety interests.

4. The Convention does not affect any law of a receiving State which requires that the consumer should present a complaint in a special form within that State or which prohibits certain types of claims, which regulates the access to certain types of procedures, different to the small claims procedures, or the rules of legal representation of a person before a judge or a court of law.

Article 2 – Definitions

For the purposes of this Convention:

1. "Tourist and visitor abroad" means any person habitually resident in a Contracting State who is traveling to a destination, arriving or taking a trip to a foreign country, or is at the moment in a country other than the country of his or her habitual residence, for leisure, business, conferences, religious or educational purposes or for any personal purpose other than to be employed by a resident entity in the country visited, who benefits from the characterization as consumer under the law of the receiving State or under the law of the Contracting State of his or her habitual residence ("the State of origin") even if the person is a national of these countries. This definition includes one-day visitors or excursionists, overnight-visitors and all non-permanent foreign students, without regard to the length of stay in the receiving State. "Tourist" also means a tourist defined as such by the World Tourism Organization (UNWTO), who is staying temporarily outside of his or her country of habitual residence.

2. "Central Authority" means an official, a public authority or a liaison office in each Contracting State designated as responsible for coordinating the application of this Convention.

3. "Competent Authority" means the competent administrative or judicial authority that makes a request for assistance on behalf of the tourist or of another authority for mutual assistance, or which receives a request from the tourist.

4. "Seller or supplier" of products or services means any natural or legal person who, in respect of the laws that protect consumer's or tourist's interests, is acting for purposes relating to his trade, business, craft or profession.

5. "Consumer complaint" means a statement, supported by reasonable evidence, that a seller or supplier has committed, or is likely to commit, an infringement of the laws that protect consumer's interests.

Article 3 – Application in the Event of Emergencies

1. This Convention shall also apply to urgent measures of protection of all international tourists and visitors in the receiving State, without regard to their nationality, domicile or habitual residence in cases of travel accidents, climatic or nuclear or any catastrophic accidents, without prejudice to special laws, treaties or conventions establishing preferential treatment for certain categories of travelers, tourists or consumers.

2. The Convention does not affect any law of a State visited ("the receiving State") or international treaty which requires special measures from this State and from the international community in case of terrorist attacks or acts of war, or their threat thereof. .

Article 4 – Central Authorities

1. Each contracting State should indicate a Central Authority to centralize and organize cooperation efforts.

2. The Central Authority in the receiving State shall provide advice, information and assistance to tourists, using established channels of mediation and enforcement of consumer rights as well as small claims tribunals available in the country, as partners, and shall also provide distance procedures and enforcement agreements, if available at the time in the receiving State.

3. The Central Authority in the State of the tourist's habitual residence may be contacted in order to provide assistance and counsel to the tourist and to the other Central Authorities, and shall provide the tourist with a copy of his or her data when the tourist returns to the country, using all established channels of mutual assistance, collection of evidence and documents, distance procedures and facilitated enforcement, which are available at the time in the country to help this tourist.

4. The Central Authority of both countries may share the data, evidence and documents only with the tourists involved, being prohibited the its use or share outside the evaluation system created by this Convention and the one by the World Tourism Organization.

5. Each Contracting State is responsible for the participation of the tourism and travel industry and of private systems of conciliation, mediation and arbitration,, and the rules of this Convention does not affect any law that regulate or prohibit private binding arbitration in consumer affairs.

Article 5 – Competent Authorities

1. Each Contracting State shall designate the Central Authority and the competent authorities as those responsible for the enforcement of the laws that protect consumers' interests and shall cooperate with each other, without prejudice to any bilateral or multilateral agreement.
2. The competent authorities in the Contracting States designated as responsible for the enforcement of the laws that protect consumers' interests shall cooperate with each other, under the supervision of the Central Authority, without prejudice to any bilateral or multilateral agreement.

CHAPTER II - MUTUAL ASSISTANCE AND LEGAL AID

Article 6 – Obligations of the Receiving State

1. The Contracting State visited or the State where the tourist is located at the moment of the infringement of consumer rights, of the problem or accident ("the receiving State") shall consider the tourist as a consumer, without any kind of discrimination, and shall provide, in accordance with its law, the tourist or visitor with any help available in its administrative and judicial system
2. In order to ensure mutual assistance, accessibility and recognition of all complaints and claims in the contracting States, the receiving State shall cooperate in regard to protection of foreign tourists, without any discrimination particularly on domicile, residence or nationality, so as to:
 - I – take all possible measures to inform and advise the tourists, directly or indirectly, about their rights and possibilities to take legal measures during the stay at this country, using the forms suggested at the annex;
 - II – indicate the competent authorities in the region to advise and to register complaints, under the laws of this country;
 - III – put the tourist in contact with consumer protection enforcement authorities to, small claims tribunals or free legal services and networks that can assist in the situation;

IV – register the case, maintaining all data for 5 years, and cooperate with the Central authority designated as responsible for the implementation of the laws that protect the interests of consumers from other Contracting States.

V – maintain and develop the form suggested at Annex I on its own languages, and inform all Central Authorities of the main legal changes that may have an impact on the protection of tourists or consumers.

Article 7 – Obligations of the State of Origin

The consumer protection authorities or judicial authorities of the Contracting State of the domicile or habitual residence of the tourist ("the State of origin") shall provide to all receiving States, in due time:

I - mutual information on the legal rights of consumers and tourists;

II – the identification of the channels, services and possibilities to have information and assistance in another language;

III – the identification of a Central Authority, responsible to maintain an accessible site or telephonic contact channels, to help tourists in distress, specially indicating the address of all competent administrative authorities, small claims tribunals or registered alternative dispute resolution possibilities in the country or region;

VI – joint efforts to prepare written material and capacitation to the enforcement authorities or Central Authorities of other countries about the legal regime in the country.

V – maintain and develop the form suggested at Annex I on its own languages and inform all Central Authorities of the main legal changes that may have an impact on the protection of tourists or consumers.

Article 8 – Exchange of information on requests and Information Sharing

1. The Central Authorities of both States shall take all necessary steps to help and to obtain any relevant information, without delay, on the solution to the problem registered under this Convention and may share this database with each other and the other competent Authorities so as to undergo a periodical evaluation of the Convention mechanism every two (2) years.

2. Cooperation may be refused in a Contracting State only if manifestly contrary to its public order, taking into account humanitarian law and international standards of protection of consumers, visitors and tourists.

Art. 9 – Legal Aid

1. Without prejudice to the Hague Convention of international Access to Justice, concluded 25 October 1980, and to other treaties which are more favorable to cooperation and access to justice, nationals of any Contracting State and persons habitually resident in any Contracting State shall be entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

2. Persons to whom paragraph 1 does not apply, but who formerly had their habitual residence in a Contracting State in which court proceedings are to be or have been commenced, shall nevertheless be entitled to legal aid as provided by paragraph 1 if the cause of action arose out of their former habitual residence in that State.

3. In States where legal aid is provided in administrative, social or fiscal matters, the provisions of this Article shall apply to cases brought before the courts or tribunals competent in such matters.

JUSTIFICATION

Protection of foreign tourists is a new subject of Private International Law and could be done by the consumer protection system in place, if a new universal network system is created

The European Union since 2007 has established an *EU-wide network of national consumer enforcement* authorities with investigation and enforcement powers, under the Regulation (EC) No 2006/2004 on Consumer Protection Cooperation, with very good results to avoid cross-borders (small) litigations. The network of European Consumer Centers (ECC-Net) offers free consumer help and advice, not only by writing (travel advice and buyers' guide for European consumers shopping for goods and services in other EU countries, Norway or Iceland), but also by helping to avoid problems and if necessary, with a free expert to help settling complaints against an EU-based foreign trader.¹ These Centers are co-sponsored by the European Commission and national governments and informed in all airports or tourism offices. This system and the Regulation (EC) No 2006/2004 on Consumer Protection Cooperation have proved to be very useful at the Olympic Games 2012 and it is a gateway to the European Small Claims Procedure, facilitating access to justice for consumers in Europe.² But this system is accessible only for consumers with residence in Europe or tourists that have Europe as their destination. A more global system of cooperation could be envisaged. ASADIP has supported the creation of a global cooperation network of enforcement.

Cooperation is needed to assure not only information and mutual assistance to tourists, individuals traveling outside their culture, law and language, but also to ensure access to justice in the country visited, avoiding discrimination of foreign tourists, and facilitating the enforcement of the protection afforded by law and the recognition of decisions

The protection of foreign tourists can be achieved by creating a global network ensuring international cooperation and mutual assistance to allow the solution of the majority of cases and consumers problems in the country of destination of the tourist, avoiding *ex post facto* cross-borders litigations in consumer matters, which are not only inefficient to protect consumers rights, but also very costly for the tourism industry.

The Hague Conference expertise in building global networks organized by Central Authorities will enhance the access by foreign tourists to justice, and the standard forms in various languages will facilitate assistance to consumers.

¹ Available in: http://ec.europa.eu/consumers/ecc/index_en.htm .

² The European Small Claim Procedure is available “to resolve cross-border disputes in cases involving amounts of €2,000 or less. However, a new report from the European Consumer Centers Network (ECC-Net) shows that this user-friendly procedure, available since 1 January 2009, is often under used. The European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States. A judgment given in the European Small Claims Procedure is recognized and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.” Available in: https://e-justice.europa.eu/content_small_claims-42-en.do .

The establishment of Central Authorities will contribute significantly to the organization of networks which may ensure mutual assistance, information and combined actions, as well as to develop standard forms in different languages which may collect and register tourist complaints. It is hoped, that way, that this system may assist consumers and contribute to the resolution of the conflict both in the visited State as well as in the State of origin of the tourist. Recent bilateral agreements between China³ and over 100 countries (146 to be more exact)⁴ include a clause to facilitate the access of the Chinese tourists to national enforcement agencies of consumer protection and also linguistic help.⁵ It is noteworthy that, today, 45% of the tourism has developing countries as destination. Furthermore, with e-commerce and worldwide alliances of the transportation industry, only 36% of the foreign tourists have a contract with a travel agency in her or his State of origin. In Brazil, for example, 64% of foreign tourists conclude tourist contracts directly with providers, commercial actors and professionals in the country of destination. The establishment of a global network that facilitates access to legal assistance and to the system of consumer protection in the country of destination will enhance the confidence of tourists and will contribute to the growth and strengthening of the tourism industry.

³ See DAN, Wei. A Protecção do Turista através do Direito do Consumidor: Efeitos da Globalização e o Estudo Empírico da China, in *Revista de Direito do Consumidor* 83 (2012) 40, quoting, ZHANG, Buhong, LAI, Bao, (2009), "An Overview of the Internationalization Process of Chinese Outbound Tourism", *International Economics and Trade Research*, Vol. 25, No. 6, pp.16-20.

⁴ Para os detalhes, ver <http://www.cnta.gov.cn>.

⁵ The standard provision is to find at the China-Brasil : "MEMORANDO DE ENTENDIMENTO ENTRE O MINISTÉRIO DO TURISMO DA REPÚBLICA FEDERATIVA DO BRASIL E A ADMINISTRAÇÃO NACIONAL DE TURISMO DA REPÚBLICA POPULAR DA CHINA NA FACILITAÇÃO DE VIAGENS DE GRUPOS DE TURISTAS CHINESES AO BRASIL ...ARTIGO II 1.Os legítimos direitos e interesses dos cidadãos Chineses em viagem ao Brasil em grupos turísticos devem ser protegidos por leis Chinesas e Brasileiras relevantes. Em caso de violação, as agências em questão serão sujeitas a tais leis. 2.A Parte Brasileira e suas instituições turísticas ou provedores de serviços turísticos do Brasil devem montar "linhas de atendimento telefônico" para consulta e assistência em caso de emergência para os turistas Chineses. Entretanto, a Parte Brasileira deve demandar aos provedores de serviços turísticos do Brasil a disponibilização de informações relevantes para as agências de viagem designadas pela China, particularmente sobre possibilidades de viagens internas no Brasil, serviços importantes e respectivos preços e demais informações que ajudem a proteger os direitos legítimos dos turistas." And at the Memorandum EU-China (Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China -ADS), L 83/14, 20.3.2004, Joint Declaration on Implementation Arrangements: "2. *Protection of Chinese tourist rights* The legitimate rights and interests of the Chinese citizens travelling to the territory of the Community in tourist groups shall be protected by the pertinent legislations of the Community, Member States and China. In case of violation, those regulations shall be applied to the relevant agencies. The Community encourages the Member States and their tourism service providers to set up hotlines for consultation and emergency assistance to Chinese tourists." At the USA-China Agreement the application of relevant laws are assured: "2. *Protection of Chinese tourists' rights and interests* Relevant laws and regulations in China and the United States apply to Chinese citizens and their legitimate rights and interests while traveling from China to and within the territory of the United States under this MOU."

**PROPOSITION DE L'ORGANE NATIONAL DU GOUVERNEMENT DU BRESIL
PROJET DE CONVENTION SUR LA COOPERATION POUR LA PROTECTION DES
TOURISTES ET VISITEURS ETRANGERS – VERSION ESPAGNOLE**

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**PROPOSAL BY THE NATIONAL ORGAN OF THE GOVERNMENT OF BRAZIL
DRAFT CONVENTION ON CO-OPERATION IN RESPECT OF THE
PROTECTION OF TOURISTS AND VISITORS ABROAD – SPANISH VERSION**

PROYECTO DE ACUERDO DE COOPERACIÓN EN MATERIA DE PROTECCIÓN DE LOS VISITANTES Y TURISTAS EXTRANJEROS

Los Estados Partes en el presente Convenio,

CONSIDERANDO el desarrollo del turismo global y su rol económico y social, con beneficios para todos los Estados involucrados, y teniendo en cuenta que dichos turistas y visitantes extranjeros, como consumidores, contribuyen a fortalecer los sectores turísticos y de desarrollo económico en todos los Estados,

RECONOCIENDO que los turistas extranjeros no deben ser objeto de discriminación y deben tener acceso a la justicia y a la asistencia administrativa en los países de origen y de destino, a fin de proteger sus derechos privados,

CONSCIENTES de que el turista extranjero puede necesitar informaciones y ayuda especial en idiomas extranjeros en cuestiones jurídicas y de Derecho del Consumidor en el país visitado, y decididos a asegurar que aquellos turistas extranjeros puedan beneficiarse de los sistemas de protección al consumidor ya establecidos en todos los Estados y regiones, a fin de evitar litigios transfronterizos costosos e ineficientes en materia de consumo,

DESEANDO facilitar el acceso internacional a la justicia y a la cooperación también en los tribunales de menor cuantía en materia de consumo, así como los esfuerzos conjuntos eventualmente necesarios de los organismos y las autoridades nacionales en defensa al consumidor,

RECONOCIENDO la necesidad de establecer una red mundial de organismos y autoridades encargados de hacer cumplir los derechos de los consumidores, dispuestos a brindar asistencia a los turistas extranjeros, y convencidos del impacto positivo de las Autoridades Centrales en la organización y provisión de asistencia e información en los Estados Contratantes, de acuerdo a las Directrices de las Naciones Unidas para la Protección del Consumidor de 1985 (1999) y el Código Ético Mundial para el Turismo (Resolución de la Asamblea General 56/212, del 21 de diciembre de 2001)

ACUERDAN las siguientes disposiciones –

CAPÍTULO I – OBJETO Y FINALIDAD

Artículo 1 – Objeto

1. Este convenio establece las condiciones bajo las cuales la Autoridad Central y las autoridades competentes de los Estados Contratantes deberán cooperar y facilitar el acceso a la justicia y a la asistencia administrativa a los turistas extranjeros.

2. El presente Convenio establece una red de autoridades encargadas de monitorear y hacer cumplir la legislación relativa a la protección del consumidor y del turista, con el objetivo de garantizar el cumplimiento de la legislación del Estado visitado ("el Estado de recepción") y facilitar la resolución de casos de incumplimiento o resistencia a la ley en el Estado de recepción y el acceso a la justicia por parte de los turistas, también en materia de reclamaciones de menor cuantía en dicho Estado, así como el uso de los documentos elaborados en las quejas administrativas efectuadas en otros Estados Contratantes.

3. Este Convenio también establece las condiciones bajo las cuales las autoridades competentes de los Estados Contratantes, designadas como responsables de la aplicación de la legislación protectora de los intereses de los consumidores, también deben cooperar con el fin de garantizar el cumplimiento de aquellas leyes, conforme los estándares internacionales de protección al turista internacional y los instrumentos jurídicos regionales e internacionales específicos con el fin de mejorar la protección de los intereses económicos y de seguridad de los consumidores y turistas.

4. El Convenio no afecta a ningún derecho de un Estado de recepción que requiera que el consumidor presente una queja de manera especial dentro de aquel Estado o que prohíba ciertos tipos de demandas, el acceso a ciertos tipos de procedimientos, diferentes de los procedimientos para reclamaciones de menor cuantía, o relativas a reglas de representación legal de una persona ante un juez o Tribunal.

Artículo 2 - Definiciones a los efectos del presente Convenio:

1. "Turista y visitante extranjero", significa cualquier persona que tenga su residencia habitual en un Estado Contratante en viaje a un destino, llegando o haciendo un viaje a un país extranjero, o que se encuentre temporalmente en país distinto a su país de residencia habitual, para fines de ocio, comercio, conferencias, propósitos religiosos o educacionales o para cualquier propósito personal, siempre que no sea el de trabajo en una empresa establecida en el país visitado, quien se beneficia de la definición de consumidor bajo la legislación del Estado de recepción o en virtud de la ley del Estado Contratante de su residencia habitual ("el Estado de origen"), aún cuando sea nacional de estos países; esta definición incluye el visitante por un día o excursionista, el visitante por una noche y todos los estudiantes extranjeros no permanentes, independiente del tiempo de estadía en el Estado de recepción. "Turista" también significa un turista definido como tal por la Organización Mundial del Turismo (UNWTO), que se encuentra temporalmente fuera de su país de residencia habitual.

2. "Autoridad Central" significa un funcionario público o un *liaison office* en cada Estado Contratante designado como responsable de la coordinación de la aplicación del presente Convenio.

3. "Autoridad Competente" significa la autoridad judicial o administrativa competente que formula una solicitud de asistencia de un turista o de otra autoridad a través de la ayuda mutua o que recibe una petición del turista.

4. "Vendedor o proveedor" de los productos o servicios de cualquier persona natural o jurídica que, respecto de las leyes que protegen los intereses del consumidor y del turista, actúe con un propósito relacionado con su actividad económica, oficio, arte o profesión.

5. "Reclamo del Consumidor" significa una declaración, basada en pruebas razonables, de que un comerciante o proveedor ha cometido o está a punto de cometer una violación a las leyes que protegen los intereses del consumidor.

Artículo 3 – Aplicación en Eventos de Emergencia

1. Este Convenio se aplicará también a las medidas urgentes para proteger a todos los turistas y visitantes internacionales en el Estado de recepción, independientemente de sus nacionalidades, domicilio o residencia habitual, en casos de accidentes de viaje, accidentes climáticos o nucleares o cualquier accidente catastrófico, sujeto a leyes especiales, Acuerdo o Convenio que establezca un trato preferencial a determinadas categorías de viajeros, turistas o consumidores.

2. El Convenio no afecta a ningún derecho de un Estado visitado ("el Estado de recepción") o Acuerdo Internacional que requiera, en el caso de eventos o amenaza de ataques terroristas o actos de guerra, medidas especiales del Estado y de la comunidad internacional.

Artículo 4 - Autoridades Centrales

1. Cada Estado Contratante designará una Autoridad Central encargada de centralizar y organizar los esfuerzos de cooperación.

2. La Autoridad Central del Estado de recepción proporcionará asesoramiento, información y asistencia a los turistas, utilizando los canales de mediación establecidos y la aplicación de los derechos del consumidor y los tribunales de reclamaciones de menor cuantía existentes en el país, así como los socios y también los procedimientos a distancia y acuerdos de implementación si están disponibles en el Estado de recepción en aquel momento.

3. La Autoridad Central del Estado de residencia habitual del turista puede conectarse a prestar asistencia jurídica y asesoramiento a turistas y a otras Autoridades Centrales, y ofrecerá al turista una copia de sus datos, cuando el turista regrese a su país, utilizando todos los canales de asistencia mutua, recopilación de pruebas y documentos, procedimiento a distancia y cumplimiento facilitado, disponible en ese momento en ese país para ayudar al turista.

4. Las Autoridades Centrales de ambos países pueden compartir esta información, pruebas y documentos sólo con turistas involucrados; está prohibido cualquier uso o divulgación fuera del sistema de evaluación creado por el presente Convenio y de la Organización Mundial del Turismo.

5. La participación de la industria del turismo y viajes y los sistemas privados de conciliación, la mediación y el arbitraje son responsabilidad de cada Estado Contratante y las disposiciones del

presente Convenio no afectarán a ninguna ley que regule o prohíba el arbitraje privado obligatorio en materia de consumo.

Artículo 5 - Autoridades Competentes

1. Cada Estado Contratante designará una Autoridad Central y autoridades competentes como encargadas de la aplicación de la legislación protectora de los intereses de los consumidores, que deben cooperar, sin perjuicio de los acuerdos bilaterales o multilaterales.

2. Las autoridades competentes de los Estados Contratantes, designadas como responsables de la aplicación de las leyes que protegen los intereses de los consumidores, deben cooperar bajo la supervisión de la Autoridad Central, sin perjuicio de los acuerdos bilaterales o multilaterales.

CAPÍTULO II - ASISTENCIA Y AYUDA JURÍDICA MUTUA

Artículo 6 - Obligaciones del Estado de Recepción

1. El Estado Contratante visitado o el Estado donde se encuentra el turista en el momento de la violación de los derechos del consumidor, del problema o accidente ("el Estado de recepción"), considerará el turista como consumidor, sin ningún tipo de discriminación, y proporcionará, de acuerdo con su legislación, al turista o visitante cualquier ayuda disponible en su sistema administrativo y judicial.

2. Para garantizar la accesibilidad a la asistencia mutua y el reconocimiento de todas las reclamaciones o acciones legales en los Estados Contratantes, el Estado de recepción cooperará en materia de protección de los turistas extranjeros, especialmente sin discriminación con respecto a domicilio, residencia o nacionalidad, en particular a fin de:

I - tomar todas las medidas posibles para informar y asesorar a los turistas, directamente o indirectamente, sobre sus derechos y las posibilidades de emprender acciones legales durante su estadía en este país, utilizando los formularios estándar sugeridos en el Anexo;

II - indicar las autoridades competentes de la región para el asesoramiento y el registro de las reclamaciones, de acuerdo con las leyes de este país;

III - poner al turista en contacto con las autoridades de protección de los consumidores, los tribunales de menor cuantía o servicios gratuitos de asistencia jurídica, y las redes que puedan ayudar en la situación;

IV - registrar el caso, manteniendo todos los datos durante 5 años, y cooperar con las Autoridades Centrales designadas como responsables de la aplicación de las leyes que protegen los intereses de los consumidores de otros Estados Contratantes;

V - mantener y desarrollar el modelo de formulario sugerido en el Anexo I en su respectivo idioma e informar a todas las Autoridades Centrales los cambios legislativos más importantes que puedan tener repercusiones en la protección de los consumidores o turistas.

Artículo 7 - Obligaciones del Estado de Origen

Las autoridades de protección al consumidor o las autoridades judiciales del Estado Contratante del domicilio o residencia habitual del turista ("el Estado de origen") proveerán a todos los estados de recepción en el momento oportuno:

I - información mutua sobre los derechos de los consumidores y de los turistas;

II - la identificación de canales, servicios y oportunidades para obtener información y asistencia en otro idioma;

III - la identificación de una Autoridad Central responsable del mantenimiento de un sitio web accesible o canales de contacto telefónicos para ayudar a los turistas en problemas, sobre todo indicando la dirección de todas las autoridades administrativas, los tribunales de menor cuantía o instituciones establecidas en la resolución alternativa de conflictos en el país o región;

IV - esfuerzos conjuntos para preparar materiales escritos y capacitación para las autoridades competentes de ejecución o Autoridades Centrales de otros países acerca del régimen legal en el país;

V - mantener y desarrollar el modelo de formulario sugerido en el Anexo I en su respectivo idioma e informar a todas las Autoridades Centrales los cambios legislativos más importantes que puedan tener repercusiones en la protección de los consumidores o turistas.

Artículo 8 - Intercambio de información sobre peticiones y Compartir de Informaciones

1. Las Autoridades Centrales de ambos Estados tomarán todas las medidas necesarias para ayudar y proporcionar cualquier información pertinente, sin demora, sobre la solución del problema registrado bajo este Convenio, y podrá compartir la base de datos entre sí y con las demás autoridades competentes de manera a realizar una evaluación periódica del mecanismo del Convenio cada dos (2) años.

2. La Cooperación puede ser rechazada por un Estado Contratante solamente si fuera expresamente contraria a su orden público, teniendo en cuenta el Derecho Humanitario y las normas internacionales de protección de los consumidores, los visitantes y turistas.

Artículo 9 - Asistencia Legal

1. Sin perjuicio de lo dispuesto en el Convenio de La Haya de Acceso Internacional a la Justicia, celebrado el 25 de octubre de 1980, y otros Tratados favorables a la cooperación y al acceso a la justicia, los nacionales de un Estado Contratante y las personas con residencia habitual en un Estado Contratante tendrán derecho a la asistencia en procedimientos judiciales en asuntos civiles y comerciales en cada Estado Contratante en las mismas condiciones que los nacionales y residentes habituales en dicho Estado.

2. Las personas a las cuales el apartado 1 no se aplica, pero que formalmente tienen su residencia habitual en un Estado Contratante en el que los procesos judiciales están por iniciarse o que se han iniciado tendrán, sin embargo, derecho a la asistencia jurídica conforme lo dispuesto en el apartado 1, si la causa de la acción se produce fuera de su residencia habitual en ese Estado.

3. En los Estados donde se presta la asistencia legal en disposiciones administrativas, sociales y fiscales, este Artículo se aplicará a los casos presentados ante los tribunales competentes para tales casos.

JUSTIFICACIÓN

La protección de los turistas extranjeros es un nuevo tema del Derecho Internacional Privado y puede ser realizada por medio de la cooperación administrativa y judicial entre los países involucrados. - EL MERCOSUR, por medio de un acuerdo de cooperación administrativa firmado en 2005 ("Acuerdo interinstitucional de entendimiento entre los organismos de defensa del consumidor de los Estados Parte del MERCOSUR para la defensa del consumidor visitante" ¹²), desarrolló acciones centradas en la asistencia al consumidor turista y la reducción de los conflictos de consumo. Recientemente fue creado un proyecto piloto en que los órganos de protección y defensa del consumidor, por medio de un formulario de reclamo en el idioma del consumidor, brindan atención y buscan conciliación (aproximadamente 80% de los conflictos de consumo son solucionados por medio de la simple intervención de las autoridades locales), asegurando más información y ampliando la atención a los turistas extranjeros. La Unión Europea desde 2007 estableció un "EU-wide network of national consumer enforcement", autoridades con investigación y poderes de ejecución, sobre el Reglamento (EC) No 2006/2004 sobre Cooperación para la Protección del Consumidor, con resultados efectivos en la resolución de conflictos transfronterizos. La red de los Centros Europeos del Consumidor (ECC-Net) ofrece gratuitamente auxilio al consumidor y asesoramiento, no solamente por escrito (consejo para viajes y guía de compradores para compra de bienes y servicios en otros países de la UE, Noruega e Islandia), sino también ayudando a evitar problemas y, en caso necesario, dispone de un especialista gratuito para ayudar a solucionar reclamos respecto a un proveedor extranjero basado en la UE¹³. Estos Centros son copatrocinados por la Comisión Europea y los gobiernos nacionales y prestan informaciones en todos los aeropuertos u órganos de turismo. Este sistema y el Reglamento (EC) No 2006/2004 sobre Cooperación para la Protección del Consumidor ha demostrado ser muy útil en los Juegos Olímpicos de 2012 y es una puerta de entrada al Proceso Europeo de Escasa Cuantía, facilitando el acceso a la justicia para consumidores en Europa¹⁴. Pero este sistema es accesible solamente para consumidores con residencia en Europa o turistas que tienen como destino a Europa. Un sistema más global de cooperación podría ser concebido.

La cooperación es necesaria para asegurar no solamente información y asistencia conjunta a los turistas, individuos viajando para lugares con cultura, derecho e idioma distantes de los suyos, sino también para asegurar el acceso a justicia en el país visitado, evitando discriminación de los turistas extranjeros y facilitando el cumplimiento de las leyes y el reconocimiento de las decisiones. - La protección de los turistas extranjeros puede ser ampliada por medio de una red global de cooperación, asegurando la cooperación internacional y la mutua asistencia para permitir la prevención y solución de conflictos de consumo en el país de destino

¹² Disponible en: www.mj.gov.br. Ver también: <http://blog.justica.gov.br/inicio/tag/acordo-institucional-paraprotecao-do-consumidor-visitante/>.

¹³ Disponible en: http://ec.europa.eu/consumers/ecc/index_en.htm.

¹⁴ El Proceso Europeo de Escasa Cuantía está disponible "to resolve cross-border disputes in cases involving amounts of €2,000 or less. However, a new report from the European Consumer Centers Network (ECC-Net) shows that this user-friendly procedure, available since 1 January 2009, is often under used. The European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States. A judgment given in the European Small Claims Procedure is recognized and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition." Disponible en: https://e-justice.europa.eu/content_small_claims-42-en.do .

del turista, evitando litigios transfronterizos *ex post facto*, en beneficio tanto de los consumidores como de la industria del turismo.

La especialidad de la Conferencia de La Haya en construir redes globales organizadas por Autoridades Centrales ampliará el acceso de los turistas extranjeros a la justicia, y los formularios estandarizados en varias lenguas facilitarán la atención a los consumidores. -

La creación de Autoridades Centrales contribuirá sobremedida para la organización de redes que aseguren mutua asistencia, informaciones y acción articuladas, y también para desarrollar formularios estandarizados en variados idiomas que puedan reunir y registrar los reclamos de los turistas, para posibilitar la asistencia y contribuir a la resolución del conflicto tanto en el Estado visitado como en el Estado de origen del turista. Los nuevos acuerdos bilaterales entre China¹⁵ y más de 100 países (146 para ser más preciso)¹⁶ incluyen una cláusula para facilitar el acceso de los turistas chinos a Agencias [*enforcement*] nacionales de protección al consumidor y también ayuda lingüística¹⁷. Hay que notar que hoy el 45% del turismo tiene como destino países en desarrollo y, con el comercio electrónico y las alianzas globales de la industria del transporte, solamente el 36% de los turistas extranjeros tienen un contrato con una agencia de viajes en su Estado de origen. En el Brasil, por ejemplo, el 64% de los turistas extranjeros celebran contratos de turismo directamente con proveedores, comerciantes y profesionales en el país de destino. La creación de una red global que posibilite el acceso a la justicia y al sistema de protección al consumidor en el país de destino ampliará la confianza de los turistas, y contribuirá a la ampliación y fortalecimiento de la industria del turismo.

¹⁵ Ver DAN, Wei. A Proteção do Turista através do Direito do Consumidor: Efeitos da Globalização e o Estudo Empírico da China, in Revista de Direito do Consumidor 83 (2012) 40, citando, ZHANG, Buhong, LAI, Bao, (2009), "An Overview of the Internationalization Process of Chinese Outbound Tourism", International Economics and Trade Research, Vol. 25, No. 6, pp.16-20.

¹⁶ Para los detalles, ver <http://www.cnta.gov.cn>.

¹⁷ La previsión estandarizada se encuentra en "MEMORANDO DE ENTENDIMIENTO ENTRE EL MINISTERIO DE TURISMO DE LA REPUBLICA FEDERATIVA DE BRASIL Y LA ADMINISTRACIÓN NACIONAL DE TURISMO DE LA REPUBLICA POPULAR DE LA CHINA EN LA FACILITACIÓN DE VIAJES DE GRUPOS DE TURISTAS CHINOS A BRASIL"... Artículo II 1. Los legítimos derechos e intereses de los ciudadanos chinos que viajen al Brasil en grupos turísticos deben ser protegidos por leyes chinas y brasileñas relevantes. En caso de violación, las agencias en cuestión estarán sujetas a tales leyes. 2. La Parte Brasileña y sus instituciones turísticas, los proveedores de servicios turísticos del Brasil, deben montar "líneas de atención telefónica" para consulta y asistencia en caso de emergencia para los turistas chinos. Sin embargo, la parte brasileña debe solicitar a los proveedores de servicios turísticos del Brasil la disponibilidad de informaciones relevantes para las agencias de viajes designadas por China, particularmente sobre posibilidades de viajes internos en Brasil, servicios importantes y sus respectivos precios y demás informaciones que ayuden a proteger los derechos legítimos de los turistas." Y también en el Memorando de Entendimiento entre Unión Europea y China (Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China -ADS), L 83/14, 20.3.2004, Joint Declaration on Implementation Arrangements: "2. Protection of Chinese tourist rights The legitimate rights and interests of the Chinese citizens traveling to the territory of the Community in tourist groups shall be protected by the pertinent legislations of the Community, Member States and China. In case of violation, those regulations shall be applied to the relevant agencies. The Community encourages the Member States and their tourism service providers to set up hotlines for consultation and emergency assistance to Chinese tourists." At the USA-China Agreement the application of relevant laws are assured: "2. Protection of Chinese tourists' rights and interests Relevant laws and regulations in China and the United States apply to Chinese citizens and their legitimate rights and interests while traveling from China to and within the territory of the United States under this MOU."

**PROPOSITION DE L'ORGANE NATIONAL DU GOUVERNEMENT DU BRESIL
FORMULAIRE DE PLAINTTE MULTILINGUE POUR LES TOURISTES ET CONSOMMATEURS
EN VISITE**

*** * ***

**PROPOSAL BY THE NATIONAL ORGAN OF THE GOVERNMENT OF BRAZIL
MULTILINGUAL COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS**

COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS

(Document de reclamation du touriste e consommateur visitante – Formulario de reclamación – Formulário para reclamações dos turistas, visiantes e consumidores)

Case Nr./Cas n./Caso n.:/20...

Date:/...../.....

I - CONSUMER DATA- IDENTIFICATION DU CONSOMMATEUR – IDENTIFICACIÓN DEL CONSUMIDOR – IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR -

Name and Surname– Nom complet – Nombre y Apellidos– Nome completo:

.....

Type and number of document/Document d'identification/Numero y tipo del documento/Tipo e numero do documento

Country of issue/Pays du document/Pays/Pais de origem

.....

Country of habitual residence/ Pays de residence/ Pais de residencia/ Pais de residência:

.....

Address at the home State /Adresse d'origine /Dirección/Endereço principal completo:

.....

City-Cité-Ciudad-Cidade:.....Country-Pays-Pais:.....

Phones – Numéros de telephone –Teléfonos – Telefones:() -

() - E-mails:.....

Alternative Address at the visited State – Adresse provisoire au pays de visite – Dirección provisória - Endereço provisório no pais visitado:

.....

.....Travel date- Date du départ – data de la partida – Data da viagem:.. /... /.....

Phone-Telephone() - E-mails:.....

Nationality/Nacionalité/Nacionalidad/Nacionalidade:.....

Optional information Informations optionelles/informaciones opcionales/informações opcionais

Profession/Profession/Ocupación/cargo:.....

Professional Address/Adresse professionel/Dirección profesional/Endereço profissional:

.....

Phone-Telephone() - E-mails:.....

Bank and account number for refund/Informationsbancaire pour reimbursement/Conta corrente para el reembolso/ Instituição bancária e número de conta para reembolso:

.....

.....SWIFT.....

II - CONSUMER CENTER OR AGENCY/Departement de Protection du consommateur responsable/ Agencia o centro de protección del consumidor involucrada/ Procon responsável:

.....

Contact person/Responsable/Contato:.....

Phone-Telephone() - E-mail:.....

III - SUPPLIER DATA/Professionel réclamé/dados del proveedor/dados do fornecedor

Trade name/nom fantase/nombre/nome comercial de fantasia:

.....
Legal name/ nom legal/nombre social/razão social:

.....
Registration number/numero de registre/registro legal/CNPJ:

Market sector/Secteur d'activité/Sector de actuación/ Ramo de atividade:

Adress/Adresse /Dirección/Endereço:.....

.....
Phones – Numéros de telephone –Teléfonos – Telefones:() - _____

() - _____ Website:.....E-mails:.....

Contacted person/Responsable/Responsável :.....

IV – COMPLAINT/RÉCLAMATION/RECLAMACIÓN /RECLAMAÇÃO

Date of incident (episode)/ Date du problème/Data del incidente/Data do problema:

/ Reason for complaint /Cause de la réclamation/Motivación/ Motivo da Reclamação:

Documents-Documentos :

Measures taken to settle de conflict/Intervention de l'Agence/ Medidas/ Medidas tomadas para resolver o conflito:

.....
Means of evidence/Documents et preuves/Provas y documentos/Meios de prova e documentos:

.....
Petition/Demande/Pedido/Petição:

.....
Signature/ Assinatura: _____

The hearing will take place on.....at.... L'audience aura lieu le.....à l'heure.....

La audiencia terá lugar el.....à las.....A audiencia terá lugar dia.....às.....

Legal aid.... available -not available Contact person:

Assistance juridique....existante-....pas existante Responsable:

Asistencia jurídica....existente-....no existente Persona responsable :.....

Assistência jurídica....existente-...não existente Responsável:.....

COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS-CH

(Document de reclamation du touriste e consommateur visitante –

旅游者、访问者和消费者投诉表– Formulário para reclamações dos turistas, visitantes e consumidores)

Case Nr./ 案卷号码/ Caso n.:...../20...

Date日期:...../.... /.....

I -CONSUMER DATA- IDENTIFICATION DU CONSOMMATEUR -

消费者身份资料和信息– IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR -

Name and Surname– Nom complet –姓名– Nome completo:

.....

Type and number of document/Document d'identification/旅行证件种类及号码 /Tipo e número do documento.....

Country of issue/Pays du document/旅行证件签发地 /País de origem

.....

Country of habitual residence/ Pays de residence/ 惯常居住国家/ País de residência:

.....

Address at the home State /Adresse d'origine / 主要通讯地址/Endereço principal completo:

.....

City-Cité- 城市-Cidade:.....Country-Pays- 国家:.....

Phones – Numéros de telephone – 电话 – Telefones:()____ - _____ ()____ - _____

_____ E-mails/电子邮件:.....

Alternative Adress at the visited State – Adresse provisoire au pays de visite – 在观光国家的临时地址- Endereço provisório no país visitado:

.....

Travel date- Date du départ –旅行日期– Data da viagem:.../.... /.....

Phone-Telephone- 电话()____ - _____

E-mails/

电邮:.....

Nationality/Nacionalité/ 国籍/Nacionalidade:.....

Optional information /Informations optionelles/ 可选择填写的信息/Informações opcionais

Profession/Profession/ 职业 /Cargo:.....

Professional Address/Adresse professionel/ 工作单位地址/Endereço professional:

.....

Phone-Telephone- 电话 ()____ - _____

E-

mails/电子邮件:.....

Bank and account number for refund/Informations bancaire pour remboursement/
用于退款的银行及账户信息/ Instituição bancária e número de conta para reembolso:

.....SWIFT.....

II - CONSUMER CENTER OR AGENCY/Departement de Protection du consommateur
responsable/ 消费者接待部门/ Procon responsável:

.....
Contact person/ 接待人姓名/Contato:

Phone-Telephone- 电话() - _____ E-mail/ 电子邮件:.....

III - SUPPLIER DATA/Professionel réclamé/ 商户信息资料/Dados do fornecedor

Trade name/Nom fantasia/ 商号/Nome fantasia:
.....

Legal name/ Nom legal/ 公司名称/Razão social:
.....

Registration number/Numero de registre/ 注册号码/CNPJ:

Market sector/Secteur d'activité/ 行业分类/ Ramo de atividade:

Address/Adresse /地址 /Endereço:
.....

Phones – Numéros de telephone –电话– Telefones:() - _____ () - _____

Website/网站:.....E-mails/电子邮件.....

Contacted person/Responsable/ 负责人/Responsável :.....

IV – COMPLAINT/RÉCLAMATION / 投诉/RECLAMAÇÃO

Date of incident (episode)/ Date du problème/ 所遭遇问题发生之日期/Data do problema:
.....

Reason for complaint /Cause de la réclamation/ 投诉理由/ Motivo da Reclamação:

Documents-Documentos-文件:

Measures taken to settle the conflict/Intervention de l'Agence/ 解决纠纷采用的方式/ Medidas tomadas para resolver o conflito:

Means of evidence/Documents et preuves/ 证据方式和文件/Meios de prova e documentos:

Petition/Demande/请求 /Petição:

Signature/ 签字/Assinatura: _____

The hearing will take place on.....at.... L'audience aura lieu le.....à l'heure.....

听证将于 (日期) 在..... (地点) 举行A audiência terá lugar dia.....às.....

Legal aid.... available -not available Contact person:

Assistance juridique....existante-....pas existante Responsable:

法律援助 有... 没有... 联络人 :.....

Assistência jurídica....existente-...não existente Responsável:.....

COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS

(Document de reclamation du touriste e consommateur visitante – Форма для жалобы от туристов, гостей и приезжающих потребителей – Formulário para reclamações dos turistas, visitantes e consumidores) -RU

Case Nr./ Номер дела/ Caso n.:...../20...

Date:...../...../.....

I -CONSUMER DATA- IDENTIFICATION DU CONSOMMATEUR – ДАННЫЕ ПОТРЕБИТЕЛЯ – IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR -

Name and Surname– Nom complet – Имя, фамилия и отчество – Nome completo:

Type and number of document/Document d'identification/Тип и номер документа /Tipo e número do documento.....

Country of issue/Pays du document/Страна, выдавшая документ /País de origem

Country of habitual residence/ Pays de residence/ Страна постоянного проживания/ País de residência:

Address at the home State /Adresse d'origine / Постоянный адрес /Endereço principal completo:

City-Cité- Город-Cidade:.....Country-Pays- Страна:.....

Phones – Numéros de telephone – Телефоны – Telefones:() -

() - E-mails/ Электронная почта:.....

Alternative Address at the visited State – Adresse provisoire au pays de visite – Временный адрес в посещаемом государстве - Endereço provisório no país visitado:

Travel date- Date du départ – Дата поездки– Data da viagem:.../.../.....

Phone-Telephone- Телефоны ()____ - _____ E-mails/ Электронная почта:.....

Nationality/Nacionalité/ Гражданство /Nacionalidade:.....

Optional information /Informations optionelles/ Дополнительная информация/Informações opcionais

Profession/Profession/ Профессия /cargo:.....

Professional Address/Adresse professionnel/ Рабочий адрес/Endereço profissional:

.....

Phone-Telephone- Рабочий телефон ()____ - _____ E-mails/ Электронная почта:.....

Bank and account number for refund/Informations bancaire pour remboursement/ Название банка и номер счёта для возмещения убытков / Instituição bancária e número de conta para reembolso:

.....

.....SWIFT.....

II - CONSUMER CENTER OR AGENCY/Departement de Protection du consommateur responsable/ Орган по защите прав потребителя / Procon responsável:

.....

Contact person/ Контактное лицо/Contato:

Phone-Telephone- Телефон ()____ - _____ E-mail/ Электронная почта:.....

III - SUPPLIER DATA/Professionel réclamé/ Данные поставщика/Dados do fornecedor
Trade name/nom fantasia/ Торговая марка /Nome fantasia:

.....

Legal name/ nom legal/ Юридическое название/razão social:

Registration number/numero de registre/ Регистрационный номер поставщика/CNPJ:

.....

Market sector/Secteur d'activité/Область деловой активности/ Ramo de atividade:

.....

Address/Adresse /Адрес поставщика /Endereço:

.....

Phones – Numéros de telephone – Телефоны – Telefones:()____ - _____

()____ - _____ Website/Веб-сайт:.....E-mails/ Электронная почта:.....

.....

Contacted person/Responsable/ Контактное лицо /Responsável :.....

IV – COMPLAINT/RÉCLAMATION / ЖАЛОБА/RECLAMAÇÃO

Date of incident (episode)/ Date du problème/ Дата инцидента/Data do problema:

Reason for complaint /Cause de la réclamation/ Причина жалобы/ Motivo da Reclamação:

Documents-Documentos- Документы:

Measures taken to settle the conflict/Intervention de l'Agence/ Меры, принятые для урегулирования конфликта / Medidas tomadas para resolver o conflito:

Means of evidence/Documents et preuves/ Подтверждающие документы и иные доказательства/Meios de prova e documentos:

Petition/Demande/ Петиция/Petição:

Signature/ Подпись/Assinatura:

The hearing will take place on.....at.... L'audience aura lieu le.....à l'heure.....
Слушание состоится (дата)..... в..... (время)A audiência terá lugar dia.....às.....

Legal aid.... available -not available Contact person:

Assistance juridique....existante-....pas existante Responsable:

Юридическая помощь имеется-... не имеется Контактное лицо :.....

Assistência jurídica....existente-...não existente Responsável:.....

COMPLAINT FORM FOR TOURISTS AND VISITING CONSUMERS

(Document de reclamation du touriste e consommateur visitante -

観光客及び訪問消費者のための苦情受付用紙- Formulário para reclamações dos turistas, visitantes e consumidores) JAPANESE

Case Nr./Cas n./ 苦情受付番号/Caso n.:...../20...

Date: (dia /mês /ano)日付 日 月 年

I -CONSUMER DATA- IDENTIFICATION DU CONSOMMATEUR - 消費者のデータ - IDENTIFICAÇÃO E DADOS SOBRE O CONSUMIDOR -

Name and Surname- Nom complet - 氏名 - Nome completo:

Type and number of document/Document d'identification/身分証明書の種類及び番号 /Tipo e numero do documento Country of issue/Pays du document/発行国

/Pais de origem:.....

Country of habitual residence/ Pays de residence/常居所の国/ Pais de residência:

.....

Adress at the home State /Adresse d'origine /居住国住所/Endereço principal completo:

.....
City-Cité-市-Cidade:.....Country-Pays-国-Pais:.....
居住地(町・市等) Phones - Numéros de telephone -電話番号 -
Telefones:() - () - E-mails-電子メール:.....
Alternative Address at the visited State – Adresse provisoire au pays de visite –仮住所
- Endereço provisório no pais visitado:
.....
Travel date- Date du départ –出国予定日– Data da viagem:../... /....
Phone-Telephone-電話番号() - E-mails- 電子メール:.....
Nationality/Nacionalité/国籍/Nacionalidade:.....

Optional information Informations optionelles/その他の情報/informações opcionais

Profession/Profession/職業/cargo:.....

Professional Address/Adresse professionnel/職場の住所/Endereço profissional:

.....
Phone-Telephone-電話番号() - E-mails電子メール:.....
Bank and account number for refund/Infomationsbancaire pour
reimbursement/払い戻しのための銀行名および口座番号/ Instituição bancária e número de
conta para reembolso:.....
.....SWIFT.....

II - CONSUMER CENTER OR AGENCY/Departement de Protection du consommateur
responsable/消費者センターまたはエージェンシー/ Procon responsável:.....

.....

Contactperson/Responsable/責任者/Contato:.....

Phone-Telephone電話番号() - E-mail電子メール:.....

III - SUPPLIER DATA/Professionel réclamé/サプライヤー データ

/dados do fornecedor Trade name/nom fantasia/商標名/nome comercial de fantasia:

.....

Legal name/ nom legal/法人名/razão social:

.....

Registration number/numero de registre/法人登録ナンバー/CNPJ:

Market sector/Secteur d'activité/市場部門/ Ramo de atividade:

Adress/Adresse /住所/Endereço:.....

.....

Phones - Numéros de telephone -電話番号 - Telefones:() -

() - Websiteウェブサイト:.....E-mails電子メール:.....

Contacted person/Responsable/責任者/Responsável :.....

IV – COMPLAINT/RÉCLAMATION /苦情/RECLAMAÇÃO

Date of incident (episode)/ Date du problème/苦情発生日/Data do problema:
/ Reason for complaint /Cause de la réclamation/苦情内容/ Motivo da Reclamação:

Documents-書類-Documentos :

Measures taken to settle de conflict/Intervention de l'Agence/苦情解決手段/ Medidas tomadas para resolver o conflito:

Means of evidence/Documents et preuves/証拠物件、書類等/Meios de prova e documentos:

Petition/Demande/請願内容/Petição:

Signature/署名/Assinatura: _____

The hearing will take place on.....at.... L'audience aura lieu le.....à l'heure.....

審問の場所及び日時は.....とき.....A audiencia terá lugar dia.....às.....

Legal aid.... available -not available Contact person:

Assistance juridique....existante-....pas existante Responsable:

法的支援....可能 -....不可能 担当者 :

Assistência jurídica....existente-...não existente Responsável:.....

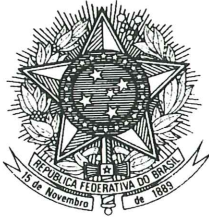
A N N E X E

**LETTRES DE L'AMBASSADE DU BRÉSIL À LA HAYE
ET DE L'ORGANE NATIONAL DU GOUVERNEMENT DU BRÉSIL**

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A N N E X

**LETTERS BY THE EMBASSY OF BRAZIL IN THE HAGUE
AND THE NATIONAL ORGAN OF THE GOVERNMENT OF BRAZIL**



EMBASSY OF THE FEDERATIVE REPUBLIC OF BRAZIL

Nº 19 /14

The Embassy of Brazil to the Kingdom of the Netherlands presents its compliments to the Permanent Bureau of The Hague Conference on Private International Law and, with reference to the Conference's Note L.c. ON No 6(14), dated 18 February 2014, has the honour to submit to the Conference the following documents to be presented by the Brazilian delegation during the Council on General Affairs and Policy of the Hague Conference, to be held in the Hague, from 8 to 10 April 2014:

(i) Draft Convention on Cooperation in Respect of the Protection of Tourists and Visitors Abroad and justification (in English, French and Spanish), accompanied by multilingual Complaint Form (in English, French, Portuguese, Spanish, Italian, Chinese, Japanese, Russian and Hebrew) and;

(ii) Copy of the letter from the National Secretary of Consumer of Brazil, Ms Juliana Pereira da Silva, to the Secretary General of the Conference, Mr Christophe Bernasconi, with a summary of the developments achieved since the inclusion of the topic of Protection of Tourists and Visitors Abroad in the agenda of the Conference.

2. The Government of Brazil would very much appreciate if said documents would be distributed by the Permanent Bureau to the other states members of the Conference before the next meeting of the Council. It is our also our honour to inform that the Government of Brazil intends to submit for the consideration of the Council on General Affairs and Policy that the proposed topic "Protection of Tourists and Visitors Abroad" is included in the working agenda of the Permanent Bureau.

The Embassy of Brazil avails itself of the opportunity to renew to the Permanent Bureau of the Hague Conference on Private International Law the assurances of its highest consideration.

The Hague, 27 March 2014.



Ofício nº 523 /2014/GAB/Senacon/MJ

March 18th, 2014.

Dear General Secretary, Mr. Christophe Bernasconi,

Ref. 58451 (14) CB/SP

Firstly I would like to thank you for your attention and the interest of the Permanent Bureau regarding our Proposal on a Convention on a Co-operation in respect of Consumers and Tourists, submitted to The Hague Conference Council on General Affairs and Policy last April 2013.

As requested we would like to present new information regarding the latest actions and developments on the theme of consumer protection and tourism.

It is important to bear in mind that the Brazilian Government, through the National Secretariat for Consumer (Senacon), has been working and developing the theme of consumer protection and tourism for many years, even before the creation of Senacon (2012) and the National Plan for Consumption and Citizenship (2013), since it has been part of the consumer protection and defence agenda.

As from the creation of the National Secretariat for Consumer in May, 2012 and the launch of the National Plan for Consumption and Citizenship in March 2013, many actions already part of the Brazilian Consumer Protection Agenda, gained momentum.

The National Plan for Consumption and Citizenship (Plandec) came to light through the Decree 7.963 of March, 15th, 2013 and its most important meaning is the irreversible awareness of citizen's empowerment as consumers. Therefore, Plandec has precisely the purpose of promoting the protection and defence of consumers through the integration and coordination of policies,

In order to achieve its goals, Plandec assembles several areas and members from the government. To this end, it was created a National Board for Consumer Relations, composed by the Council of Ministers, and the Observatory for Consumer Relations, with the mandate to promote studies and formulate proposals and to monitor the implementation of their respective policies, programs and actions.

As principal axes of Plandec, as provided in Article 4 of Decree 7.963/2013, were established: the prevention and reduction of conflicts, regulation and supervision and strengthening of the National Consumer Defence System.

The Plandec counts on the collaboration and participation of all sectors of Brazilian society, from the National Consumer Defence System, which assembles Procons, the Civil Entities, the Public Attorney's Office, the Public Defender's Office and the National Secretariat for Consumer of the Ministry of Justice; the Legislative and Judicial branches, states and municipalities, regulatory body, the consumer market, and especially the citizens themselves.

Three executive committees were created under the National Observatory for Consumer Relations to propose and implement actions in areas considered more sensitive for Brazilian consumers as regulation, after sale and tourism, counting on the participation of technical agencies involved in each area.

As regards the topic Consumption and Tourism, there are two main goals, the first is acting on conflict prevention related to this issue, and the second is to establish mechanisms and procedures to assist the consumer as tourist efficiently and rapidly. Therefore, are part of the Consumption and Tourism Technical Committee, the Ministry of Justice, chair of this committee, the National Secretariat for Consumer, the Ministry of Tourism, the Secretariat of Civil Aviation, the Ministry of Health, the Ministry of Transports, the Brazilian Tourism Institute - EMBRATUR, the Brazilian Airport Infrastructure Enterprise - INFRAERO, the National Civil Aviation Agency, the National Health Surveillance Agency and the National Ground Transportation Agency.

Regarding the theme of Consumer Protection and Tourism, the Technical Committee on Consumer Protection and Tourism, has been working on a series of actions in order to ensure not only institutional articulation but also to develop measures in order to avoid consumer disputes, for instance.

In this regard, considering that Brazil is about to host many international events such as the World Football Cup (2014) and the Olympic Games (2016) Senacon has organized a series of technical meetings held at the World Cup host cities, with the purpose to create an institutional space for integrated actions on consumer protection in the tourism field to prevent possible conflicts and to establish contingency procedures and solution of demands. These meetings main agenda is the accomplishment of diagnosis over price and quality of services, such as: accessibility; urban, interstate and air transportation; accommodation; food; contingency procedures and actions to of training and education on consumption in the tourism sector.

Apart from that, Senacon together with EMBRATUR is working on a publication that shall contain basic instructions and information for tourists. Although such material is to be launched in occasion of the World Cup, it is aimed to all consumers and tourists travelling around Brazil.

Nationally, it was held the first Workshop on Consumption and Tourism by the National School of Consumer Defense (ENDC) under the National Secretariat for Consumer, counting on the presence of the Ministry of Sport, Ministry of Tourism, the Brazilian Tourism Institute (EMBRATUR), the National Health Surveillance Agency (ANVISA) and the National Civil Aviation Agency (ANAC), in addition to as well as experts from the Consumption and Tourism field. The workshop is an important environment for knowledge construction and elaboration of public policies. On this occasion, it was specifically dealt with the existing actions regarding the protection of tourist or visitor as consumer at national and international levels. It was also discussed new flows and specific procedures to the attention given by the competent agencies as well as future actions to avoid consumption conflicts in the tourism sector.

Considering that the choice of Brazil to host major international events like the 2014 World Cup and the 2016 Olympic and Paralympic Games, gave new impetus to the already established

interest of foreign tourists about our country, the development of institutionalized actions which will resolve conflicts has become essential. The goal is not only to act on the occasion of major events, but the institutionalization of tourist consumer attention to following the government policies. In this regard, the National Secretariat for Consumer, alongside with the agencies and bodies of the National Consumer Defence System, is working so that Brazil may receive and attend, efficiently and respectably, all tourists and foreign visitors travelling here, either by the major events or only to know our country.

Harmonizing with the national agenda of consumer protection, at the international level Brazil has also sought to improve the protection of consumer tourists and visitors. Given the MERCOSUR Pilot Project for Tourist Consumer Attention, Brazil also presented a proposal for an international convention for the protection of tourist and visitor as consumer in the Hague Conference on Private International Law.

In order to present the topic of consumer protection and tourism, to discuss its importance and the idea of a new concept to the international treatment of tourists and visitors, ensuring to all fair and balanced treatment, realizing that nowadays the tourist consumer is a global citizen, the Senacon together with EMBRATUR have organized the I International Seminar on Consumer Protection and Tourism. The Seminar hosted at the Brazilian Ministry of Justice, in Brasilia last 11th and 12th March 2014 for the first time gathered authorities from Brazil, Argentina, Canada, China, Colombia, Peru, Dominican Republic, Germany, Mexico, Portugal, Spain, The Netherlands, the United States of America, Uruguay and Consumers International, to specifically discuss consumer protection and tourism.

During the Seminar it was presented a publication named "*A Proteção Internacional do Consumidor Turista e Visitante*" which reunites articles of experts and authorities of consumer protection and tourism from Australia, Brazil, Canada, Chile, China, Colombia, Costa Rica, The Netherlands, Peru, Portugal, Switzerland, Uruguay and representing the civil society *Consumers International*. Each authority and expert worked on the theme of consumer protection and tourism, not

only presenting the peculiarities of each country but highlighting the importance of protecting consumers in that area.

As a result of the discussions held during the IV panels, considering the growth of tourism world-wide; that consumer protection contributes to the improvement of products and services quality, and that both tourism and consumer protection have an international importance in economic and social development, participants of the I International Seminar on Consumer Protection and Tourism have officially recognized the consumer protection as a tool of citizenship, economic and social development and the importance of developing such theme at the international level through an effective cooperation among national agencies of consumer protection, tourism bodies and the civil society. This document was named Brasilia Letter and we take this opportunity to gladly share it with you.

Considering the international importance and respect of the Conventions and multilateral legal documents adopted by the Conference, which not only meet the legal needs of its member countries, but also due to their important legal reference, this National Secretariat for Consumer has chosen this forum, as its juridical tradition as the world organisation for cross-border cooperation in civil and commercial matters, to discuss the theme of consumer protection and build an international instrument aiming to protect consumers in tourism services.

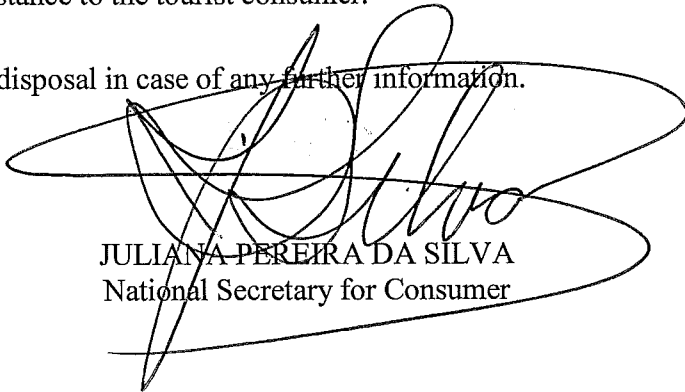
The Brazilian Proposal on Protection of Consumers as Tourists presented at the Hague Conference on Private International Law (HCCH), was prepared by the National Secretariat for Consumer under the Ministry of Justice (Senacon/MJ) from a study elaborated by the American Association of Private International Law - ASADIP, officially presented at Council of General Affairs and Policy Meeting of the Hague Conference on Private International Law by the Brazilian Delegation.

The proposal is simple and since through mutual assistance, exchange of information and coordinated actions, making use of standardized forms in several languages will enable the collection and recording of complaints from tourists and visitors consumers, facilitating the assistance and contributing to conflict resolution in both visited and consumer original countries.

We believe that a cooperation such as the one proposed, will make it possible to create a global network through international cooperation and mutual assistance, enabling the solution of most cases and problems of consumers in the country of destination of the tourist or visitor, providing the access to justice and a proper assistance to the tourist consumer.

We remain at your disposal in case of any further information.

Yours Sincerely,



JULIANA PEREIRA DA SILVA
National Secretary for Consumer