



Conference on Cross-Border Recognition and Enforcement of Judgments

Ministry of Justice of the Russian Federation in Saint Petersburg
(11 St Isaac's Square)

17 June 2014

QUESTIONNAIRE

The purpose of the Questionnaire is to collect information from States regarding the recognition and enforcement of foreign judgments and issues of international jurisdiction.

The concept for the roundtable discussion session stems from the work the Permanent Bureau is currently undertaking on two key aspects of private international law in cross-border litigation: international jurisdiction and the recognition and enforcement of foreign judgments. A detailed chronology setting out the background of the work undertaken by the Hague Conference in this area is located on the Hague Conference website < www.hcch.net > under "Specialised Sections" then "[Judgments Project](#)".

The Questionnaire has two parts: Part I contains questions regarding the recognition and enforcement of foreign judgments and Part II contains questions on jurisdictional issues in international litigation. Please note that the Permanent Bureau has used the same terminology in the Questionnaire as that which was used in the two detailed notes that the Permanent Bureau prepared for the work being undertaken in this area. These notes identify the issues for consideration in the study of the recognition and enforcement of foreign judgments and jurisdiction in international litigation. For more information on these two topics and for a contextual background to the Questionnaire, please refer to these two notes which are located on the Judgments Project webpage listed above. The notes are titled, "[Annotated Checklist of Issues to be discussed by the Working Group on Recognition and Enforcement of Judgments](#)" (Note 1) and "[Issues Paper on Matters of Jurisdiction including Parallel Proceedings](#)" (Note 2). A glossary of the terminology used is also located on the Judgments Project webpage, titled Annex I: [Glossary to the Annotated Checklist](#).

The detailed information provided in response to this Questionnaire will help the Hague Conference with its ongoing work on the Judgments Project and will hopefully be of use to participants beyond this Conference.

The Permanent Bureau would very much appreciate receiving your response to this Questionnaire by 30 May 2014. Responses should be sent by e-mail to < secretariat@hcch.net > with the following heading and indication in the subject field: "Questionnaire concerning the Judgments Project – [name of State]". Your co-operation in responding to this Questionnaire is very much appreciated and will greatly assist during the roundtable discussion session.

Identification (For follow-up purposes)

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PART I – RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION

NOTE: If your State has a non-unified legal system (*i.e.*, two or more systems of law which apply in different territorial units), and the information is available, please indicate the jurisdiction/s referred to in your answers.

1. Is your State a party to any bilateral and/or multilateral treaties and/or agreements that govern the recognition and enforcement of foreign judgments?

YES
 NO

If yes, please specify.

The rules on recognition of foreign judgments are set forth in the Convention Concerning International Carriage by Rail (COTIF, 1980, Article 12), the Convention on the Contract for the International Carriage of Goods by Road (CMR, Article 31, paragraph 3), the Vienna Convention on Civil Liability for Nuclear Damage (Article XII), and the International Convention on Civil Liability for Oil Pollution (Article X), the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (Article 8), the Hague Conventions Relating to Civil Procedure (1954, Articles 18-19, and 1905, Articles 18-19), the Hague Convention on International Access to Justice (1980, Articles 15-17), the Convention on Recovery Abroad of Maintenance (1956, Article 6), the Hague Convention on Civil Aspects of International Child Abduction (1980, Article 14), the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (1980), the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Article 10), bilateral treaties on judicial assistance with Austria (Article 31, paragraph 2), Algeria (Articles 20-26), Bosnia and Herzegovina (Articles 26-27, and Articles 30-31), Bulgaria (Articles 42-48), Czechoslovakia (Articles 50-60), Cyprus (Articles 22-26), Hungary (Articles 56-66), Iraq (Articles 36-41), Mongolia (Articles 52-60), Montenegro (Articles 26-28, and Articles 30-32), Poland (Articles 49-58), Romania (Articles 50-58), and the USSR (Articles 48-54), the Agreement with Greece on the Mutual Recognition and Enforcement of Judgments (1959), the Convention with France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters (1971), the Agreement with Austria on Mutual Recognition and Enforcement of Maintenance Decisions (1961), and the Convention with Belgium on the Recognition and Enforcement of Maintenance Judgments (1973).

2. Does your State have rules of national law that govern the recognition and enforcement of foreign court judgments in your State (*i.e.*, legislation or case law)?

YES
 NO

If yes, please specify.

Rules on recognition of foreign judgments are set forth in legislation: the Private International Law Code (Articles 86-96 and 101) and the Law on Bankruptcy Proceedings (Articles 1861-19270). Case law plays an important role in interpretation of these rules.

3. Which courts in your State hear applications for the recognition and enforcement of foreign judgments?

Please specify.

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If the judgment concerns a civil matter, the ruling on recognition and enforcement will be rendered by a competent higher court. If the foreign judgment concerns a commercial matter it will be recognized by commercial courts.

4. Are there specific conditions that need to be met in order for a judgment to be recognised and enforced by a court in your State?

YES

NO

If yes, under what circumstances (e.g., the jurisdiction of the foreign court must be recognised, the respondent to the application for recognition and enforcement must have assets in your State, the judgment must be a monetary judgment that is final and conclusive)?

The conditions for recognition and enforcement are laid out in the PIL Code. These conditions include the following:

(a) Finality (Article 87) – the party has to submit a confirmation by a foreign court or other competent authority that the judgment has become final pursuant to the law of the country of origin (i.e., that no appeal can be taken from this judgment and that it conclusively resolves the matter at issue).

(b) Jurisdiction – the foreign judgment will not be recognized if the Serbian court or other authority has exclusive jurisdiction for the matter that was decided by the judgment (Article 89, paragraph 1). For the exclusive jurisdiction to exist, there has to be an express provision in a statute (the PIL Code, Article 47).

(c) Reciprocity (Article 92, paragraph 1) – this condition does not necessitate the existence of a treaty on mutual recognition of judgments. It suffices that Serbian judgments are recognized in the practice of the country of origin. Reciprocity is presumed until a contrary proposition is established (Article 92, paragraph 3). In order to establish lack of reciprocity, one has to show that domestic judgments of the same kind as the judgment for which recognition is sought are not recognized in the country of origin. Reciprocity is not required for recognition of foreign judgments on divorce or annulment of marriage, nor for paternity and maternity judgments (Article 92, paragraph 2). Reciprocity is also not required if a domestic national seeks recognition, or if it is a status judgment concerning only the nationals of the country of origin (Article 92, paragraph 2 and Article 94, paragraph 1).

(d) Absence of procedural violation that prevented the party to participate in the proceedings (Article 88, paragraph 1).

(e) Absence of violation of public policy (Article 91) – this condition does not apply to status judgments that are relative only to the status of a national of the country of origin.

(f) Absence of a final domestic judgment or of a foreign judgment that was already recognized in the same matter (Article 90) – the final domestic judgment brought in the same matter will impede recognition of a foreign judgment even if the proceedings before the foreign court were initiated earlier. The interested party may prevent this result, however, by filing a timely *lis pendens* motion.

Grounds of exclusive jurisdiction are the following:

- in disputes on real rights on immovables, leasing of immovables and possessory actions relating to immovables, if the immovables are located in the territory of Serbia (the PIL Code, Article 56);

- in foreign investment disputes relating to investment in Serbia; even though these disputes must not be referred to a foreign court, they may be referred to foreign arbitration (the former Yugoslav Foreign Investment Act, Article 17);

– in disputes arising out of private-public partnerships and concessions; even though these disputes must not be referred to a foreign court, they may be referred to foreign arbitration (the Act on Public-Private Partnerships and Concessions, Article 60).

There are also certain provisions on exclusive jurisdiction of domestic courts in the former Yugoslav Law on Maritime and Internal Navigation (LMIN) (Article 1051), the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters

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of Collision (Article 1), the Montreal Convention for the Unification of Certain Rules for International Carriage by Air (Article 33), the International Convention on Civil Liability for Bunker Oil Pollution Damage (Article 9), etc.

The effect of foreign judgments passed in bankruptcy proceedings will be governed by Act on Bankruptcy (Articles 176-193). This Act does not speak of recognition of foreign judgments, but it regulates, in Article 186, a request for recognition of foreign bankruptcy proceedings that may be submitted by a foreign representative of the bankruptcy estate. Serbian court has exclusive jurisdiction in bankruptcy proceedings over a debtor having its registered seat in the Republic of Serbia, and over a natural person resident in Serbia (Bankruptcy Act, Article, 174, paragraph 3).

5. Can a court in your State refuse to recognise and enforce a foreign court judgment that otherwise meets the specific conditions identified in Part I question 4?

YES
 NO

If yes, under what conditions (e.g., procedural fairness, lack of proper notice to the defendant, an inconsistent foreign or domestic judgment, parallel domestic proceedings)? In addition, are those grounds for refusal raised on the court's own motion or by the party opposing the recognition and enforcement application?

The answer is in principle, no, but may be qualified as to the following situations: When the domestic proceedings had been initiated earlier and are still pending (i.e. there is no final domestic judgment) at the moment when recognition is requested, while the foreign proceedings between the same parties and in the same matter were initiated later but have resulted in a final judgment, the court will stay the proceedings for recognition of that judgment until the domestic proceedings are completed (Article 90, paragraph 2). This will usually mean that the recognition of the foreign judgment will eventually be denied, due to the impediment of a final domestic judgment, unless the domestic proceedings are dismissed with a decision that is not a decision on the merits.

A further exception concerns the situation when the foreign judgment is rendered against a foreign state or an international organization that is entitled to immunity from enforcement. The Enforcement and Security Act in Article 22 provides that in such case enforcement may not be ordered without a prior written approval of the competent authority, unless the foreign state or international organization expressly agreed to enforcement. However, the competent authority has not been specified.

6. Is recognition and enforcement of a foreign judgment subject to a special procedure before a court in your State?

YES
 NO

If yes, please describe the procedure.

Recognition and enforcement of a foreign judgment may be the main subject of a proceeding, or the question of recognition may be resolved as a preliminary question in a proceeding involving another matter, in particular the enforcement (the PIL Code, Article 101, paragraph 5). If the recognition and enforcement is the main subject of the proceeding, the ruling on recognition and enforcement will be rendered in a non-litigious procedure, pursuant to the Non-litigious Procedure Act (1982, last amended in 2014). This procedure is not specific to recognition and enforcement but applies also in many other civil matters, when it is not necessary to resolve a dispute, but rather to regulate a civil law relationship. In general, this type of proceeding should be faster and less formal than the regular (litigious) civil proceeding. For

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example, oral hearing may be omitted and the court may proceed even if one of the parties is not present. The issue of recognition and enforcement of a foreign judgment may also arise as a preliminary question in any litigious, non-litigious or execution proceeding. The court may then decide upon such a preliminary question if there is no prior ruling on enforcement and recognition.

7. What types of judgments are entitled to recognition and enforcement in your State?

- Judgments entered in default
Comments.

Default judgments may be recognized provided there is a proof that adequate service of process was made on the defendant, so that the defendant was notified that the action against him was pending (Article 88, paragraph 2). The court will not review the fulfilment of this condition on its own motion, but only at the party's request. If the party has in any way participated in the hearing on the merits before the foreign court, that party cannot invoke the inadequacy of service in the recognition proceedings (Article 88, paragraph 2).

- Provisional and protective measures
Comments.

According to a decision of the Supreme Court of Yugoslavia Gž 46/93, rendered in 1993, a provisional measure issued by a foreign court may be recognized under the same conditions as any other foreign judgment. However, this has been frequently challenged in doctrine on the basis that such decisions of foreign courts cannot fulfil two conditions specifically provided by domestic statute: (a) finality and (b) jurisdiction. The enforcement of foreign protective and provisional measures is therefore not certain in Serbia.

- Non-money judgments
Comments.

A foreign judgment is any decision of a foreign court or other authority, if such decision is equated with a decision of the court in the country of origin, as well as a settlement reached in a foreign court (the PIL Code, Article 86, paragraphs 2 and 3). In order to be recognized, the foreign judgment has to be brought in civil and commercial matters - status, family, succession, contract, tort, property, intellectual property, labor relations, etc. It can be either a money or non-money judgment. The characterization of a foreign judgment (i.e. whether it is rendered in a civil and commercial matter) is done pursuant to domestic law. For example, judgments of foreign courts brought in criminal proceedings may not be recognized and enforced except in the part in which they contain a decision on the pecuniary claim of the victim. Similarly, foreign judgments entered for the purpose of collection of State taxes are not enforceable.

- Judgments awarding non-compensatory damages
Comments.

There is a very high probability that a foreign judgment awarding non-compensatory damages would be denied recognition on the basis of public policy.

- Other.

If other, please specify.

8. In your State, is it possible to appeal a courts decision to recognise and enforce a foreign judgment?

YES
 NO

If yes, under what circumstances.

There is a right of appeal against the ruling of the competent higher court to the Supreme Court of Cassation and against the ruling of the competent commercial court to the Commercial Court of Appeals (Article 101, paragraph 3). The appeal may be based on the incorrect application of substantive or procedural law by the lower court, or on insufficiently or wrongly determined facts (the Non-Litigious Procedure Act, Art. 30, para. 2).

9. What is the frequency of applications for recognition and enforcement of foreign court decisions per year? It is appreciated that this information may not be readily available in your Ministry; however such information may possibly be obtainable from the courts in your State.

0-5
 5-10
 10-20
 more than 20.

Any comments.

NO STATISTICS ARE KEPT IN THE COURTS ON THE NUMBER OF APPLICATIONS FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS. IT IS OUR ESTIMATE, BASED ON EMPIRICAL DATA THAT THERE ARE MORE THAN 20 PER ANNUM.

10. How many applications for the recognition and enforcement of a foreign court decision are granted in your State?

0-5
 5-10
 10-20
 more than 20.

Any comments.

NO STATISTICS ARE KEPT IN THE COURTS ON THE NUMBER OF GRANTED APPLICATIONS FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS. IT IS OUR ESTIMATE, BASED ON EMPIRICAL DATA THAT THERE ARE MORE THAN 20 PER ANNUM.

PART II – JURISDICTIONAL REQUIREMENTS

1. Is your State a party to any bilateral and/or multilateral treaties and/or agreements that govern issues of jurisdiction in international litigation?

YES
 NO

If yes, please specify.

The rules on international jurisdiction are set forth in the following multilateral treaties that bind Serbia: the International Convention on

Unification of Certain Rules Concerning Civil Jurisdiction in Matter of Collision (Articles 1-8), the Convention Concerning International Carriage by Rail (COTIF, Appendix A (CIV), Article 57, Appendix B (CIM), Article 46), Appendix D (CUV), Article 11, and Appendix E (CUI), Article 24, the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air (Article 28), the Convention Supplementing the Warsaw Convention (Articles VII-VIII), the Convention on the Contract for the International Carriage of Goods by Road (CMR, Article 31), the Vienna Convention on Civil Liability for Nuclear Damage (Article XI), the International Convention on Civil Liability for Oil Pollution (Article IX), the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (Article 7), the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air (Articles 33 and 46), and the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Article 9).

Further, the rules on international jurisdiction in status, family and succession matters can be found in Serbia's bilateral treaties on judicial assistance with Austria, Bulgaria, Czechoslovakia, France, Greece, Hungary, Mongolia, Poland, Romania and the USSR. Some of these treaties also contain rules on international jurisdiction in disputes for compensation of damages (e.g., the bilateral treaty with Hungary, Article 39a, paragraph 3), and in disputes relating to real rights on immovables (e.g., the bilateral treaties with Czechoslovakia, Hungary, and Poland).

2. Does your State have rules of national law that govern issues of jurisdiction in international litigation in your State? (i.e., legislation or case law)

YES

NO

If yes, please specify.

Statutory provisions on international jurisdiction are set forth in the PIL Code (Articles 46-78, 80 and 81), the Law on Civil Procedure (Articles 16, paragraphs 3 and 26), the Law of Obligations and Basic Property Relations in Aerial Navigation (Article 158, 164-165), the former Yugoslav Law on Maritime and Internal Navigation (Article 1051), the Law on Bankruptcy (Articles 16, paragraph 2, 176, 177 and 183), the Law on Bills of Exchange (Article 111), the Law on Cheques (Article 28), the former Yugoslav Law on Foreign Investment (Article 17), and the Law on Public-Private Partnerships and Concessions (Article 60, paragraph 3).

3. Have the rules of international jurisdiction in your State recently been reviewed? (e.g., by the legislators, law reform bodies, other professional bodies).

YES

NO

Comments

In January 2009, the Ministry of Justice established a Working Group for drafting of the new PIL Code consisting of eleven members. The Group had several meetings from 4 February till May 2009 and produced a draft of the first 32 articles of the new Code. After a two year pause, the Group resumed its work in March 2011. This resulted in the first complete draft of the PIL Code consisting of 192 articles, that was presented for public discussion on 22 November 2011. The Council of Europe opinion on the Serbian Draft was delivered on 22 October 2012. Thereupon, the Working Group was extended with several new members and is currently elaborating the final text of the Draft.

4. In which of the following situations would the courts in your State have jurisdiction:

- where the defendant voluntarily submits to the jurisdiction
Comments

The court will not dismiss the action for lack of international jurisdiction if the defendant has given his consent to jurisdiction (the LCP, Article 16, paragraph 3). The consent may be given expressly in a choice of court agreement or choice of court clause, or tacitly, by entering appearance without raising the objection of lack of jurisdiction of the Serbian court, or by filing a pleading that contains an answer to the claim.

- where the defendant is domiciled or resides in your State
Comments

Serbian courts have general jurisdiction for litigious and non-litigious matters with an international element on the basis of domicile of the defendant in Serbia if the defendant is a natural person, or on the basis of seat of the defendant in Serbia, if the defendant is a legal entity (Article 46, paragraph 1 and 5). This means that, if the defendant is domiciled or has its seat in Serbia, the domestic courts will have jurisdiction to entertain any kind of action or decide any matter with an international element. There are certain exceptions to this rule, however, the most important being actions relating to immovables situated abroad. Serbian courts also have general jurisdiction if the defendant has residence in their territory provided that two alternative conditions are met: first, the defendant has no domicile, either in Serbia or in any other country (the PIL Code, Article 46, paragraph 2) and second, the defendant is domiciled abroad, but is currently residing in Serbia and both parties (plaintiff and defendant) are citizens of Serbia (Article 46, paragraph 3). The criterion of residence is excluded in certain disputes and jurisdiction can be based exclusively on the domicile of the defendant or on grounds of special jurisdiction specified in the relevant articles (the PIL Code, Article 59, paragraph 1, Article 61, paragraph 1, Article 64, paragraph 1, Article 66, paragraph 1, and Article 67, paragraph 1).

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- where the defendant carries out regular commercial activity in your State
Comments

Serbian courts have jurisdiction in disputes arising out of contractual or non-contractual obligations that were created in Serbia or that have to be performed there, if the defendant has a representative office or agency in the Serbian territory or if he has conferred the conduct of his business to a legal entity having its seat in the Serbian territory (the PIL Code Article 55).

It should be noted also that the Law on Commercial Companies provides for local jurisdiction of Serbian courts for disputes arising out of matters regulated by that law, based on place of business of the branch of a foreign corporation. This rule of local jurisdiction may be applied accordingly to establishment of international jurisdiction.

- where the contract is performed or there is a breach of contract in your State
Comments

Serbian courts have jurisdiction in disputes arising out of contractual or non-contractual obligations that were created in Serbia or that have to be performed there, if the defendant has a representative office or agency in the Serbian territory or if he has conferred the conduct of his business to a legal entity having its seat in the Serbian territory (the PIL Code Article 55).

- where a contract is concluded executed between parties in your State
Comments

Serbian courts have jurisdiction in disputes on contractual claims if the contractual obligation was created at the time when the defendant was present in Serbia (the PIL Code Article 54, paragraph 2);

- where the parties to the dispute have designated the courts of your State for the purpose of deciding disputes between them?
Comments

The choice of forum agreement in favour of a Serbian court will be enforced if at least one of the parties is a citizen of Serbia or a legal entity having its seat in Serbia (the PIL Code, Article 49, paragraph 2). Similarly, the choice of forum agreement in favour of a foreign court will be enforced if the dispute does not belong to exclusive jurisdiction of Serbian courts, and if at least one of the parties is a foreign citizen or a legal entity having its seat abroad (the PIL Code, Article 49, paragraph 1). The PIL Code does not require any special form for such agreements.

- where an injury occurs to a person as the result of a tortious act occurring in your State
Comments

Serbian courts have jurisdiction in disputes on non-contractual liability for damages, if the damage occurred in the territory of Serbia. This provision applies also in disputes initiated by direct action of the tort victim against the insurance company for compensation of damages and in recourse actions (the PIL Code Article 53);

- where damage occurs to tangible property as the result of a tortious act occurring in your State
Comments

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Serbian courts have jurisdiction in disputes on non-contractual liability for damages, if the damage occurred in the territory of Serbia. This provision applies also in disputes initiated by direct action of the tort victim against the insurance company for compensation of damages and in recourse actions (the PIL Code Article 53);

- where the defendant does not reside in your State, but the defendant's immovable property is held in your State

Comments

Serbian courts have jurisdiction in disputes on contractual and non-contractual claims, if the defendant's tangible or intangible property is found in the territory of Serbia (Article 54, paragraph 1)

- Other

Please specify

Serbian courts have jurisdiction in disputes on ownership, disposal with, liens on and leasing of aircraft and ships, if the aircraft or ship is registered in Serbia (Article 58, paragraph 1)

5. Is the nature of the above-mentioned grounds such that without these present a court is not entitled to hear a case?

YES

NO

Comments.

Presently, Article 26 of the Code of Civil Procedure provides that Serbian court will have international jurisdiction:

- if its jurisdiction for a dispute with an international element is expressly determined by a statute or an international treaty; or
- if its jurisdiction arises from the provisions on local jurisdiction of the domestic court.

The second option is available if there is no express provision on jurisdiction of the domestic court for the specific type of dispute with an international element.

When a court in the course of the proceedings establishes that Serbian courts have no jurisdiction for the particular dispute, the court shall declare the lack of jurisdiction on its own motion (ex officio), invalidate all actions undertaken in the proceedings until that moment and dismiss the action. The court will not proceed in this manner, however, in cases in which the jurisdiction of Serbian courts can be founded on the defendant's consent and the defendant has given his consent (the Law on Civil Procedure, Article 16, paragraph 3).

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6. In which of the following situations would a court, otherwise having jurisdiction as described in part II question 4, decline to exercise its jurisdiction in your State:

where there are identical proceedings (proceedings involving the same parties and the same cause of action) occurring in another State's courts
Please indicate the relevant source of law and any comments.

PIL Code, Article 80:

The court of the Serbia shall stay the proceedings at the request of a party if a dispute is pending before a foreign court in the same legal matter and between the same parties, as follows:

- (1) if the proceedings were first instituted before the foreign court in the respective dispute;
- (2) if the court of Serbia does not have exclusive jurisdiction for the dispute;
- (3) if there is reciprocity.

Comment: If the foreign proceedings is completed with a judgment on the merits, the court in Serbia shall dismiss the action. If the foreign proceedings is dismissed (e.g. because of the lack of jurisdiction), the court in Serbia will continue with the proceedings.

where there are related proceedings (those proceedings that do not have identical parties and causes of action but have related causes of action and parties)
Please indicate the relevant source of law and any comments.

where the court determines that it is an inappropriate forum
Please indicate the relevant source of law and any comments.

where it is in the interests of justice to do so
Please provide any comments.

other
Please indicate.