Compendium of Principles of Law Regarding the Practice of Dispute Resolution in Various Countries

Compiled by the International Dispute Resolution Practice Group

International Society of Primerus Law Firms

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COMPENDIUM OF PRINCIPLES OF LAW

Chapter 2: The Practice of Dispute Resolution in Various Countries

- China, the People's Republic of
- Cyprus
- Hungary
- Germany
- Greece
- Japan
- Romania
- Switzerland
- The Netherlands
- USA

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Countries Represented:

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This compendium was prepared by various members of the Primerus International Dispute Resolution Practice Group, and was compiled and edited by Stephen Taylor, Esq. and Robert Gegios, Esq. of Kohner, Mann & Kailas (Milwaukee, WI). It is not the work of any one person or firm and does not represent the views of any one person or firm. It is intended as a general overview of the principles of law regarding the practice of Dispute Resolution in various jurisdictions around the world. It should be used as a starting point for understanding the law in any particular jurisdiction.

** The summaries within this Compendium chapter are considered works in progress. The chapter will continue to evolve as more country/ jurisdictional summaries are added to the chapter, and as updates are made to the summaries which reflect new laws or changes to the laws since the summaries were originally published or last updated. Please note that each summary is dated to reflect the law of the corresponding country on that date. Any updates or revisions made to a country's summary will be dated to reflect when the summary was last updated or revised.

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THE PEOPLE'S REPUBLIC OF CHINA

A. Court System

I. In General

Strictly speaking, the court system of the People's Republic of China ("P.R.C." or "China") refers only to the People's Court system. Certain parallel, quasi-judicial, bodies exercise some degree of judicial power, although their actual judicial functions are limited.

In simple terms, China's judicial system is divided institutionally into three parts:

1. the People's Court system,
2. the People's Procuratorate system, and
3. the Public Security system.

Civil matters fall within the exclusive domain of the People's Court system, which serves as the state's main trial organ.

The People's Courts exercise judicial power on behalf of the twenty-two Provinces, five Autonomous Regions and four directly administered Municipalities (Beijing, Chongqing, Shanghai, and Tianjin). The Special administrative regions, Hong Kong and Macau, have separate judicial systems based on British common law traditions and Portuguese civil-law traditions respectively, as prescribed by the Basic Law of both jurisdictions. Under the "one country, two systems" principle, these separate, autonomous judicial systems do not come under the dominion and influence of the Supreme People's Court. The legal systems of Hong Kong and Macau fall outside of the scope of this chapter.

The P.R.C. Constitution and the Organic Law of the People's Courts of 1979, as amended in 1983, divide the People's Courts into four levels. The state's judicial authority is exercised by Local People's Courts at various levels, the Supreme People's Court, and certain Courts of Special Jurisdiction. The Local People's Courts are subdivided into Basic, Intermediate, and Higher People's Courts. The Courts of Special Jurisdiction include Military, Railway Transport, Maritime, Forestry, Farming, and Petroleum Courts. All P.R.C. courts, except those in the Special Administrative Regions ("SAR") of Hong Kong and Macau, are subject to the control and supervision of the Supreme People's Court, which is China's court of final appeal.

1. The Basic People's Courts

Under the Law on the Organization of People's Courts, Basic People's Courts (also known as the "Grassroots Courts") consist of local tribunals in counties, autonomous counties, cities without administrative districts, or administrative districts of cities. They are responsible for trying most first instance criminal, civil and administrative cases. These courts also handle civil disputes and criminal misdemeanors which do not require a trial. Cases deemed to involve matters of a "serious nature," as defined by statute, may bypass the Basic People's Court and be referred directly to an Intermediate or Higher People's Court for adjudication. The Basic People's courts also direct the work of the People's Mediation Committees, which are organized by local residents to resolve minor civil and administrative disputes.

2. The Intermediate People's Courts

These courts are established in prefectures, provincial capitals, and autonomous regions and municipalities directly under central government control. The Intermediate People's Courts have both original and appellate jurisdiction. Although appeals from judgments of the Basic People's Courts represent the majority of the caseload, Intermediate People's Courts act as the court of first instance for matters transferred from the Basic People's Courts (including those deemed to be of "a serious

nature"). These courts also have original jurisdiction over certain types of action—*including most notable cases involving foreign litigants:*

a. According to the Law on Civil Procedures, the intermediate court has exclusive jurisdiction over "major foreign-related cases," cases with "significant community impact," and other cases assigned to it by the Higher People's Court.

b. Intermediate courts also preside over criminal cases involving crimes committed by foreigners or cases involving Chinese citizens who violate the legal rights and interests of foreigners.

c. Under the Law on Administrative Procedures, intermediate courts have original jurisdiction over cases involving:
   i. the verification of patent rights,
   ii. customs handling issues,
   iii. objections to administrative actions taken by State Council departments or provincial governments.

3. The Higher People's Courts

Under the Law on Court Organization, the Higher People's Courts are established at the provincial level, as well as in autonomous regions and municipalities directly under central government control. The internal structure and procedures of Higher People's Courts mirror those of the Supreme People's Court, as prescribed by the Organic Law of the People's Courts of 1979. Like the Intermediate People's Court, the Higher People's Court can function as either a court of first instance or a court of appeal. It serves as a court of first instance for specific statutorily-defined matters, as well as for cases transferred from an Intermediate People's Court. It also hears appeals of judgments made by the Intermediate People's Courts, as well as appeals of decisions made by People's Procuratorates.

4. The Supreme People's Court

The Supreme People's Court is the court of final appeal. It is not, however, the final arbiter of legal interpretation in all cases. The legislature (the National People's Congress and its Standing Committee) may provide interpretations of, and amendments to, the P.R.C. Constitution, as well as to the Basic Laws of Hong Kong and Macau, and has the power to appoint or dismiss the President of the Supreme People's Court, the court's vice presidents, divisional chiefs and associate chiefs, and judges. The Supreme People's court in turn supervises the work of the Basic, Intermediate, and Higher People's Courts, as well as those of the Courts of Special Jurisdiction.

The Supreme People's Court is divided into three divisions: civil, economic, and criminal. The Supreme People's Court has original jurisdiction (as the court of first instance) for certain statutorily-prescribed matters, and over those matters before lower courts which, upon review, the court deems it necessary to try itself. It also has appellate jurisdiction over appeals from judgments of Higher People's Courts, most Courts of Special Jurisdiction, and the Supreme People's Procuratorate. This court also supervises the work of local People's Courts at all levels, as well as that of the Courts of Special Jurisdiction.

Under the Organic Law of the People's Courts of 1979, "[t]he Supreme People's Court may interpret questions concerning the specific application of laws and decrees in judicial proceedings." In practice, this power has developed in recent years to an extent that many refer to as "judicial legislation." There is no Constitutional or other statutory basis for this broad power of statutory interpretation. However, legislation does permit the Supreme People's Court to give lower courts guidance in order to fill gaps in existing statutes, resolve conflicts of law, and clarify legal ambiguities so that the judicial branch can carry out effective legal enforcement.

5. Courts of Special Jurisdiction

The Courts of Special Jurisdiction include the Military, Railway Transport, Maritime, Forestry, Farming, and Petroleum Courts. Judgments from these special courts are directly appealable to the

Supreme People's Court, or for Maritime Courts, to the local Higher People's Court. Of these, foreign businesses are perhaps most likely to encounter the maritime and railway transportation courts. The ten maritime courts are located in the major port cities of Shanghai, Guangzhou, Qingdao, Tianjin, Dalian, Ningbo, Wuhan, Xiamen, Beihai, and Haikou. These courts have original, exclusive jurisdiction over all maritime cases arising within their assigned geographical jurisdiction (land-based shipping-related facilities and territorial waters), including maritime trade disputes and disputes relating to the operation of ports. This includes disputes between Chinese and foreign nationals, organizations, and commercial enterprises. These courts have no jurisdiction over criminal and any other civil matters. Railway Transport courts have jurisdiction over commercial matters related to railway usage, including freight contracts and issues stemming from damage caused by or to the railway operator.

B. Do All P.R.C. Jurisdictions Apply the Same Law?

Yes, with the exception of the Special Administrative Regions of Hong Kong and Macau. *See* § A.I.4 above.

C. Costs of a Civil Lawsuit in the P.R.C.

1. Court Fees

I. Court costs are almost always a negligible factor in litigation decision-making. In civil cases involving entitlement to real or personal property, court costs depend upon the amount in controversy. For example, a 100 RMB (approx. $16 USD) fee is required to file a case involving a trademark dispute, which is deemed an administrative matter; while a 50 RMB (approx. $8 USD) filing fee applies to all other administrative matters. In intellectual property cases, court fees range from 500 to 1,000 RMB (approx. $80 to $160 USD) where there is no ascertainable amount in controversy, and is otherwise a direct proportion of the amount in dispute. Fees for civil matrimonial matters range from 50 to 300 RMB (approx. $8 to $47 USD). No court fees apply to divorce proceedings with marital assets not exceeding 200,000 RMB (approx. $31,350 USD). For proceedings where the marital assets exceed such a sum, court fees are charged at a rate of 0.5% of the amount in excess of the statutory maximum. In non-property related civil disputes, court fees range anywhere between 50 and 100 RMB.

2. Attorneys Fees

The government of each province, autonomous region and the four municipalities maintains a detailed fee schedule setting forth the upper and lower limits on attorney's fees based on the nature of the dispute and the amount in controversy. Within this limit, the client can freely negotiate his or her fees with the representing attorney.

Under P.R.C. law, the losing side bears the burden of paying the prevailing side's court costs, *but each side remains responsible for their own attorney's fees*.

D. Are Courts Regularly Fair to Foreign Parties?

Based on the limited anecdotal evidence available, P.R.C. courts are generally fair to foreign litigants. Both Chinese and foreign media have cited to instances where, in disputes between Chinese and foreign parties in which both sides have plausible arguments to support their claims, P.R.C. courts have sided with the foreign litigant after a reasoned analysis of the facts and law.

E. Enforcement of Domestic Judgments in the P.R.C.

1. Where Certain Property of the Debtor is Known

P.R.C. law provides for legal and equitable remedies to the prevailing party in a civil dispute if the losing side is found capable of rendering payment, but refuses to do so. These include the issuance of injunctions, seizure of assets, and garnishment of income. Criminal prosecution can also ensue from continued intransigence.

2. Investigative Powers of Enforcement Officials

Enforcement power is vested in the People's Court from which the final judgment was issued and the one in which the assets are located, but investigative responsibilities are borne by party petitioning for enforcement.

3. Enforcement Costs

Once a People's Court has issued an order to execute on a judgment, official enforcement costs are minimal.

F. Enforcement of a Foreign Verdict in the P.R.C.

1. Necessity of an Acknowledgement Proceeding Before a P.R.C. Court

Under Articles 267-269 of the Law of Civil Procedure, *extensive acknowledgement proceedings must be conducted prior to the recognition of any foreign judgment*. These articles provide:

a. Article 267

II. Where a legally effective judgment or ruling made by a foreign court requires the People's Court in the P.R.C. to acknowledge its validity and execute it, the applicant may directly request a competent intermediate People's Court to do so, or the foreign court may request the People's Court to do so, according to the international treaties which China has concluded or to which China is party. Acknowledgement and execution can also be effectuated in accordance with the customary practice of mutual reciprocity between courts.

b. Article 269

III. If an award made by a foreign arbitral organ requires the recognition and enforcement by a people's court of the People's Republic of China, the party concerned may directly apply to the Intermediate People's Court of (a) the place where the party subjected to enforcement has his or her domicile or (b) the location of the identified property of the party against whom enforcement is sought. The People's Court shall deal with the matter in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity.

c. Article 268

IV. If a valid Article 267 or 269 request is received, the People's Court shall examine it accordance with the invoked international treaty to which China is a party or customary principles of mutual reciprocity between courts. If the court concludes that judgment sought to be enforced does not contradict the basic principles of P.R.C. law, nor violate state sovereignty, security or the country's social and public interests, it can recognize the validity of the judgment or written order, and, if required, issue a writ of execution to enforce it in accordance with the relevant provisions of this Law.

Significantly, China is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Although China requires that the award be made in the territory of a nation that is also a party to the Convention, most nations, including the major trading nations, are parties. Thus recognition under treaty obligations is more widely available than is the case with foreign court judgments. Awards must be commercial in nature, as defined by Chinese law.

While China has signed bilateral treaties with some countries for the mutual recognition and enforcement of court judgments, China has not concluded such arrangements with the United States and has only done so with France among E.U. member nations. To date, there has been no evidence of successful foreign judgment enforcement pursuant to any bilateral treaty. As such, petitioners from a majority of nations will be forced to rely upon customary principles of reciprocity and mutual recognition.

In practice, successful enforcement by reciprocity in any particular case is a poor predictor of outcome when applied to the facts of a particular dispute. Enforcement under reciprocity will likely require that the relations between the P.R.C. and the foreign country where the award was rendered to be positive. Even in such circumstances, success can hinge on factors unrelated to the merits, such as the ability to show evidence of recognition of a comparable Chinese court decision on principles of reciprocity by a court in the domestic jurisdiction of the petitioner.

Foreign creditors should also realize that once recognition of a judgment is secured, the judgment must be promptly enforced. In most instances, enforcement must commence within six months of recognition if against a corporation, and within twelve months of recognition if against a private individual.

Petitioners should note that, for public policy reasons, Chinese courts are unlikely to enforce foreign judgments that were secured without a full hearing on the issues in which both sides were present. Therefore, those seeking to enforce a default judgment may be forced to submit to a costly trial of the substantive issues in an Intermediate People's Court in order in order to render such an order enforceable.

2. Enforcement of a Recognized Verdict

Once recognized, the foreign judgment may be enforced as if entered by an Intermediate People's Court. No further domestication of that judgment will be required for enforcement in other P.R.C. administrative divisions (excluding Hong Kong and Macau).

G. Conflict of Laws: Do P.R.C. Courts Only Apply P.R.C. Law?

No. In August 2007, the Supreme People's Court issued several provisions interpreting and clarifying laws governing "foreign-related contracts." Article 3 of these provisions requires that "[w]here the parties to the contract intend to choose the governing law of the contract, such choice of law must be express."

Furthermore, Article 5 further provides that "[i]f the parties fail to choose the governing law, the law of the country or region which is most closely connected with the contract shall apply. The People's Court, in determining the law applicable to contractual disputes according to 'the most closely connected' principle, shall adopt the law of the country or region most closely connected with the contract as the applicable law according to the nature of the contract and the obligations performed by a party which best reflect the central characteristics of the contract." Therefore, under certain conditions, P.R.C. courts may apply foreign law to adjudicate a dispute.

H. Arbitration and Mediation in the P.R.C.

1. Can Foreign Attorneys Represent Foreign Clients in P.R.C. Arbitration or Mediation Proceedings?

Yes. Originally a point of contention, the Ministry of Justice has settled the issue by declaring that the common or chief representative of a foreign law firm can represent a foreign client in arbitration or mediation proceedings. No other foreign attorney is permitted to do so.

China has a bifurcated arbitration system - domestic and foreign related (international). It is important to note that "Domestic" cases include not only two Chinese parties, but also parties with foreign investors. "Foreign related" means at least one foreign party, or a foreign subject matter, is involved in the arbitration. Qualified foreign attorneys can represent clients involved in either type of arbitration matter.

The parties to arbitration are free to choose the law applicable to their case, *except* disputes arising from an Equity Joint Venture, foreign investment enterprise or contracts on joint exploration of natural resources, to which Chinese law must apply. Such choice of law must be specified in the language of the parties' contract or agreement to arbitration. In matters requiring interpretation of P.R.C. law, foreign attorneys can cooperate with a Chinese law firm.

2. Is Arbitration or Mediation Binding in the P.R.C.?

Yes. In its commentary to the Arbitration Code, the Supreme People's Court declared that Chinese arbitration becomes binding on both sides once they elect to pursue arbitration in lieu of litigation. The final decision of the arbitration is immediately legally enforceable. Failure to comply with the terms of the arbitrator's decision can subject the offending party to legal, equitable, and criminal sanctions. *See* §E-1.

3. Does Arbitration or Mediation Often Happen in the P.R.C.?

More arbitration proceedings are handled each year in China than by any other arbitration institution or country. Since 1983, more than 2,500,000 commercial arbitration cases have taken place in China. The aggregate amount in controversy in these proceedings exceeds $ 8 billion USD. There are currently over 160 arbitration commissions throughout China. Since it is still difficult to enforce a foreign court judgment in China, arbitration remains the preferred method of binding dispute resolution.

The most prominent in disputes involving international parties (other than solely in an investment capacity) is the Beijing-based China International Economic and Trade Arbitration Commission (CIETAC). Parties to CIETAC arbitration can also agree to conduct the arbitration outside of P.R.C. territory. Some other domestic arbitration bodies (for example, the Shanghai Arbitration Commission) also conduct international arbitrations. Parties should be aware that CIETAC encourages parties to enable arbitrators to play a conciliation role; however, any party may withdraw such permission at any time, causing proceedings to revert to pure arbitration. Most CIETAC arbitration is conducted in English and Mandarin, although the rules permit the parties to conduct proceedings entirely in English. CIETAC awards are enforceable in nations that have ratified the New York Convention, and may be enforced in China by registration of the award with the appropriate Intermediate People's Court.

I. Power of a Chinese Attorney Out of Court

P.R.C. attorneys have no out-of-court powers by virtue of being an admitted attorney.

CYPRUS

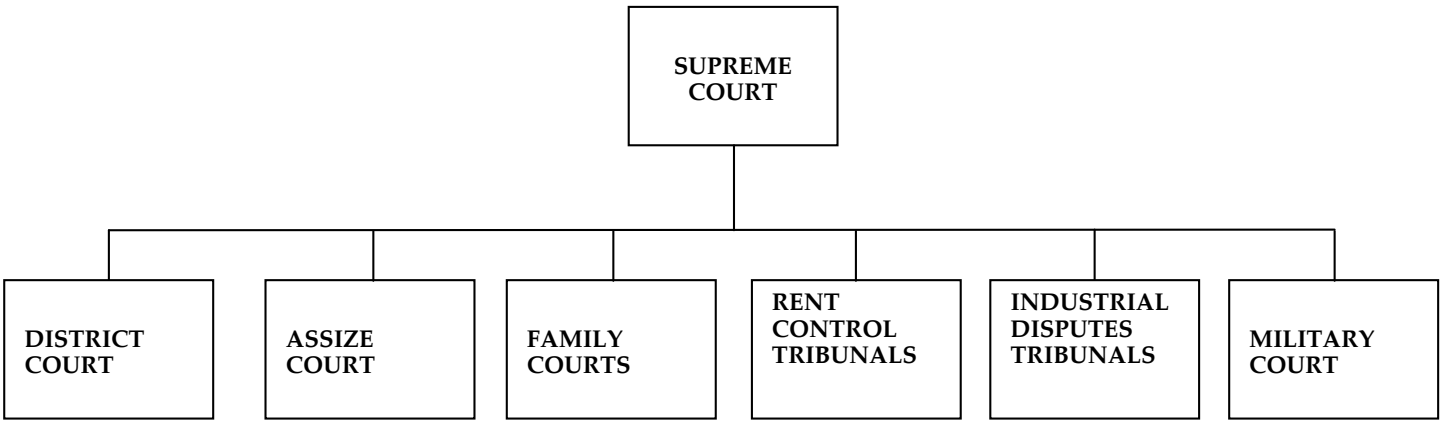
A. Court System

I. In general

Cyprus has a common law system based largely on the English legal system. Common law principles and those of equity apply.

Hence, the doctrine of stare decisis is followed. That is, Cyprus courts are bound to follow decisions of courts of a higher level (binding force of judicial precedent).

The structure of the Cyprus Courts are organised as per the below diagram:



SUPREME COURT:

The Supreme Court is the highest court in the Republic. It acts as an Appellate Court, Administrative Court (review of administrative/executive decisions) and Admiralty Court. It also has exclusive jurisdiction to issue prerogative writs of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition.

DISTRICT COURTS:

There are six District Courts, one for each administrative district of the Republic of Cyprus.

The District Courts have jurisdiction to hear and determine at first instance all civil actions, with the exception of matters that fall within the jurisdiction of the Rent Control Tribunal, the Industrial Disputes Tribunal and the Family Court.

The District Courts also have criminal jurisdiction and can try all criminal cases for offences punishable with up to 5 years imprisonment (offences for which the maximum penalty exceeds 5 years imprisonment are tried by the Assize Court – see below).

Cases before District Courts are heard and tried by a single Judge.

ASSIZE COURTS:

The Assize Court has unlimited jurisdiction to hear and determine at first instance any criminal case. However, in practice, only criminal cases where the sentence provided by law for the offence in question exceeds 5 years imprisonment are brought before the Assize Court (offences punishable with up to 5 years imprisonment are tried by the District Courts – see above).

Each Assize Court is composed of 3 judges (either: a District Court President and two District Court Judges; a District Court President, a Senior District Judge and a District Judge; or a District Court President and two Senior District Judges). All decisions are by majority rule. There is no jury.

District Court Judges are appointed by the Supreme Court to serve in the Assize Courts on rotation.

The accused or the prosecution may appeal to the Supreme Court against the conviction or acquittal or against the sentence imposed by the Assize Court.

FAMILY COURTS:

The family courts have exclusive jurisdiction to determine petitions for divorce, custody of children, and maintenance and property disputes between spouses where the parties are members of the Greek Orthodox Church.

If the parties belong to one of the other religious groups, jurisdiction is vested in the Family Court for Religious Groups.

Cases are heard and determined by a single judge, except divorce petitions which are heard and determined by a court composed of three judges.

RENT CONTROL TRIBUNALS:

The Rent Control Court has jurisdiction to determine matters regarding recovery of possession of controlled rented property and the determination of fair rent, as well as any other incidental matter.

Each Rent Control Court (of which there are currently three) is composed of a President, who is a member of the Judiciary, and two lay members nominated by the tenants and landlords associations. The lay members have a purely consultative role.

INDUSTRIAL DISPUTE TRIBUNALS:

The Industrial Disputes Tribunal has exclusive jurisdiction to determine matters arising from the termination of employment such as the payment of compensation (except where the amount claimed exceeds the equivalent of 2 years' salary, in which case the jurisdiction is vested in the District Court), payment in lieu of notice, compensation arising out of redundancy and any other claim for any payment arising out of the contract of employment. Additionally, the Industrial Disputes Tribunal has jurisdiction to determine any claim arising out of the application of the *Protection of Motherhood Law,* cases of unequal treatment or sexual harassment in the workplace and disputes between provident funds and their members.

The Industrial Disputes Tribunal is composed of a President or a Judge, who is a member of the judiciary, and two lay members appointed on the recommendation of the employers' and employees' unions. The lay members have a purely consultative role.

MILITARY COURT:

The Military Court has jurisdiction to try offences committed by military personnel in contravention of the Criminal Code, the Military Criminal Code or any other law, irrespective of the sentence provided.

If the accused has the rank of Colonel or above the Military Court is constituted in the same manner as an Assize Court mentioned above.

The President of the Court is a judge belonging to the Judicial Service of the Republic. Two army officers who are appointed by the Supreme Council of Judicature are also members of the Court but they have a purely consultative role.

II. Specialized courts available?

Yes.

Examples:
Rent Control Tribunals, Industrial Disputes Tribunals, Military Court.

B. Do all Cyprus cities apply the same Law?

Yes.

The laws applicable are the following:

- The Constitution of the Republic of Cyprus
- The laws retained in force by virtue of Article 188 of the Constitution
- The principles of Common Law and Equity
- The Laws enacted by the House of Representatives.
- European Community Law

Following the accession of the Republic of Cyprus into the European Union in 2004, the Constitution was amended so that European law has supremacy over the Constitution and national legislation.

C. Costs of a Civil Court Action in Cyprus

I. Court Fees

These depend on the amount in dispute in question and according to the court scales set out in the Court Regulations.

For example, stamp duty payable on a claim between €10,000.00-50,000.00 would approximately amount to €199.00.

(2) Do the court fees have to be paid in advance to the court?

Only the out of pocket (i.e. the stamp duty payable on applications and court action documents)

(3) Is there a court fee reduction in case of a settlement?

No.

II. Attorney Fees

The Court Regulations set out the minimum amount that a lawyer is permitted to charge for the provision of a service to a client. Legal fees vary depending on the type of service to be provided.

For example, for the drafting of a contract of sale of immovable property, the Regulations have a special formula with which the lawyer calculates the minimum amount he/she is allowed to charge the client for the drafting according to the purchase price of the immovable property.

For example, for a claim of €10,000.00-50,000.00, the attorney's fees for court representation would approximately be €719.00.

(1) Is there binding law for out-of-court attorney fees?

No. The client may agree any cost arrangement/fees with his/her lawyer.

(2) Is there binding law for attorney fees for representation in a court proceeding?

Yes. The Court Regulations mentioned above provides for minimum attorney fees.

III. Attorney Fees [editors assumed interpretation]

(1) Is there binding law for out-of-court attorney fees?

Yes. The Court Regulations set out the minimum amount that a lawyer is permitted to charge for the provision of a service to a client. Legal fees vary depending on the type of service to be provided.

For example, for the drafting of a contract of sale of immovable property, the Regulations have a special formula with which the lawyer calculates the minimum amount he/she is allowed to charge the client for the drafting according to the purchase price of the immovable property.

With the exception of minimum fees, lawyers and clients may freely negotiate fee arrangements.

(2) Is there binding law for attorney fees for representation in a court proceeding?

Yes. The Court Regulations provide for minimum attorney fees. For example, for a claim of €10,000.00-50,000.00, the attorney's minimum allowable fee for court representation would approximately be €719.00.

IV. Does the loser of the court action have to compensate the winner for the court fees and (minimum) attorney fees?

Yes. Usually, the successful party to a court action is entitled to recover his/her costs from the losing party. Nevertheless, this is not a rigid rule as the Court has wide jurisdiction as to which party is entitled to costs and it may for instance, order that each party is to pay his/her own costs.

D. Are Cyprus Courts regularly fair to Foreign Parties?

Yes.

E. Enforcement of a Cypriot Verdict in Cyprus

Every court judgment or court order which orders the payment of monies may be enforced by all or by any of the following ways as per Cap. 6, the Civil Procedure Regulations law:

(a) By confiscation/seizure and sale of movable property

(b) By sale of immovable property or by registering the court judgment/order with the Lands Registry (memo) which acts as an encumbrance upon the immovable property

(c) By confiscation of property held by third parties by virtue of Part VII of this law

(d) By filing and application of search regarding the debtor (for an order for the payment of the debt by monthly instalments)

(e) Garnishee proceedings.

I. In case certain property of the debtor is known

See section E above.

II. What kind of investigative power do the enforcement officials have?

The Court Bailiffs are responsible for enforcing writ of movables and writ of attachments.

III. Enforcement Costs

See section C above.

F. Enforcement of a Foreign Verdict in Cyprus

I. Is an acknowledgement proceeding before a Cyprus court necessary?

Yes. By virtue of Law No. 121(1)/2000, the procedure to be followed for the recognition and enforecement of foregin judgments in Cyprus is set out. This Law applies to all cases in which recognition, registration and enforcement of foreign judgments is sought.

Pursuant to section 5(a) of the above Law, the procedure begins with the filing of an application by summons along with an affidavit at the District Court, in accordance with the Civil Procedure Rules where the relevant authority or the person in favour which the judgment was issued to is shown as the applicant. A date for hearing within four weeks from the filing date is then set by the court. The Respondent must be served with a copy of the application without delay.

The Respondent submits, if he/she so wishes, a written objection, accompanied by an affidavit with the facts on which his/her objection are based, at least two days prior to the hearing date. The reasons upon which the

Respondent may base his/her objection are restricted to (1) the appropriateness of the jurisdiction of the court, or (2) evidence of satisfaction of the judgment (which must be proved) and (3) the presence (or otherwise) of the prerequisites for application of the preemption laid out in the Convention may be proved either by an affidavit or by verbal (oral) testimony.
After the hearing has been concluded, the court issues its decision as soon as possible.

Furthermore, Law No. 101/1987 on International Arbitration in Commercial Matters, sets out the procedure for recognising and enforcing foreign arbitral awards in Cyprus. The New York Convention on the Recognition and Enforecemnt of Foreign Arbitral Awards of the United Nations 1958 is also applicable (as Cyprus ratified this Convention on the 29th December 1980).

As an EU Member State, the Republic of Cyprus is bound by EC Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. No measures are required to be taken in order to implement the above Regulations as they are directly applicable in all EU Member States.

II. Under what conditions can a non-EU foreign verdict be acknowledged in Cyprus?

See section F I above.

III. Costs for acknowledgement proceeding

See section C above.

IV. Enforcement of the Cypriot acknowledgement verdict in Cyprus

See section E above.

G. Conflict of laws: Do Cyprus courts only apply Cypriot law?

Principles of private international law are applicable (e.g. choice of law provisions), as well as relevant conventions which have been ratified by Cyprus. Cyprus has ratified/acceded to various such conventions and is a member of the Hague Conference on Private International Law.

H. Arbitration and Mediation in Cyprus

I. Can foreign attorneys represent foreign clients in Cyprus arbitration or mediation proceedings?

Under certain conditions.

II. Is Arbitration or Mediation binding in Cyprus?

An arbitral award is binding and enforceable.

III. Does Arbitration or Mediation often happen in Cyprus?

Not really. The main method of dispute resolution in Cyprus is litigation. Arbitration is gradually becoming more popular as a method of resolving disputes particularly in matters regarding construction, shipping, trade and insurance.

Cyprus has all the prerequisite characteristics which make a country an attractive venue for international arbitration.

Although mediation is available, it is not commonly used.

I. Power of a Cypriot Attorney out-of-court

Quite limited. The assistance the authorities and/or of the judicial courts are needed.

GERMANY

A. Court System

I. In general

County Court (*Landgericht*) → High Court (*Oberlandesgericht*) → Supreme Court (*Bundesgerichtshof*)

While new facts may be presented to the High Court, the Supreme Court regularly only checks whether the High Court has misconstrued or misapplied the law. The Supreme Court may make final decisions or remand the case back for further factual evaluation to the County Court or the High Court.

II. Specialized courts available?

Yes.

Examples:
Patent Court, Copyright Courts, Trademark Courts, Courts for unfair competition matters, Antitrust Courts, Employment Courts, Chambers for commercial disputes.

These specialized courts are dedicated chambers within certain County Courts (*Landgericht*), with panels of judges which deal with the particular subject matter (e.g. trademark cases) on a daily basis. Each German State has only a few County Courts with such specialized chambers in it. One can only file such complaints with a County Court that includes an appropriate specialist chamber. Appeals will also be to one of the few High Courts (*Oberlandesgericht*) in each German State which include such specialized appellate chambers. The Supreme Court (*Bundesgerichtshof*) also has specialized *Senate* available to deal with such special cases.

The court system for patent cases is bifurcated in Germany:

- Patent infringement cases: Specialized chambers within the County Court and High Court, Supreme Court with specialized *Senate* (as described above)
- Patent cancellation / deletion cases: Special Patent Court in Munich (as first instance) → Supreme Court (*Bundesgerichtshof* with specialized *Senat* as second instance)

B. Do all German States apply the same Law?

Yes. Civil law and criminal law are federal law in Germany. All courts in Germany apply the same civil and criminal law.

C. Costs of a Civil Lawsuit in Germany

I. Court Fees

(1) The court fees depend mainly on the amount which is at stake in a lawsuit.

Examples:

County Court level (*Landgericht*)
10,000 Euro at stake → court fees: 588 Euro
100,000 Euro at stake → court fees: 2,568 Euro
1,000,000 Euro at stake → court fees: 13,368 Euro

High Court level (*Oberlandesgericht*)
10,000 Euro at stake → court fees: 784 Euro

100,000 Euro at stake → court fees: 3,424 Euro
1,000,000 Euro at stake → court fees: 17,824 Euro

Supreme Court level (*Bundesgerichtshof*)
10,000 Euro at stake → court fees: 980 Euro
100,000 Euro at stake → court fees: 4,280 Euro
1,000,000 Euro at stake → court fees: 22,280 Euro

(2) Do the court fees have to be paid in advance to the court?

Yes. *Exception:* Summary proceedings in urgent cases, for example, a speedy injunction is necessary in the individual case.

(3) Is there a court fee reduction in case of a settlement?

Yes.

II. Attorney Fees

(1) Is there binding law for out-of-court attorney fees?

No. Fees can be freely negotiated. There are some non-binding guidelines, though.

(2) Is there binding law for attorney fees for representation in a court proceeding?

Yes. Binding law provides for statutory minimum attorney fees:

Examples (minimum attorney fees):

County Court level (*Landgericht*)
10,000 Euro at stake → attorneys' fees: 1,469.65 Euro
100,000 Euro at stake → attorneys' fees: 4,051.95 Euro
1,000,000 Euro at stake → attorneys' fees: 13,339.40 Euro

High Court level (*Oberlandesgericht*)
10,000 Euro at stake → attorneys' fees: 1,643.15 Euro
100,000 Euro at stake → attorneys' fees: 4,535.33 Euro
1,000,000 Euro at stake → attorneys' fees: 15,004.47 Euro

Supreme Court level (*Bundesgerichtshof*)
10,000 Euro at stake → attorneys' fees: 2,221.49 Euro
100,000 Euro at stake → attorneys' fees: 6,146.59 Euro
1,000,000 Euro at stake → attorneys' fees: 20,354.71 Euro

There may be additional expenses. The statutory minimum fees may change, dependent upon how the lawsuit progresses. Attorneys and clients may agree on higher attorney fees than the statutory minimum fees. Usually, attorneys and clients agree on hourly rates. If an agreed hourly fee structure results in a final fee below the statutory minimum, the attorneys must charge the latter.

III. Does the loser of the lawsuit have to compensate the winner for the court fees and (minimum) attorney fees?

Yes, according to Sec. 91 et seq. of the German Code of Civil Procedure.

D. Are German Courts regularly fair to Foreign Parties?

Yes. Even though the language in court has to be German according to German law, judges often understand English. Nevertheless, the proceedings are held in German language. Court room interpreters are available.

E. Enforcement of a German Verdict in Germany

I. In case certain property of the debtor is known

Direct seizure of this property with the help of enforcement officials is possible.

II. What kind of investigative power do the enforcement officials have?

The bailiff / marshal may ask debtor to provide a list with his assets. They may put debtor in jail until debtor provides such a list with his assets. The debtor can be forced to swear an oath that the provided list with his assets is true and accurate. The assets may then later be seized and exploited.

III. Enforcement Costs

Enforcement is relatively inexpensive, usually only a few hundred Euros. The debtor has to compensate the creditor for these costs.

F. Enforcement of a Foreign Verdict in Germany

I. Is an acknowledgement proceeding before a German court necessary?

Yes, for all verdicts outside of the EU. The non-EU foreign verdict needs to be acknowledged by a German court.

No, for all verdicts within the EU. See *Regulation (EG) No. 44/2001*.

II. Under what conditions can a non-EU foreign verdict be acknowledged in Germany?

Example: U.S. verdict

(1) The U.S. verdict needs to be a final judgment.
(2) German court needs to see the original of the U.S. verdict or a certified copy.
(3) According to German private international law, a U.S. court (not necessarily the one which decided the case) actually had proper jurisdiction in this case.
(4) The defendant was properly served with the complaint in case he did not file or say anything to his defence during the U.S. lawsuit.
(5) No violation of the *ordre public* (public policy):
For example, punitive damages often are deemed a violation of the German *ordre public*.

III. Costs for acknowledgement proceeding

See above under C.

IV. Enforcement of the German acknowledgement verdict in Germany

See above under E.

G. Conflict of laws: Do German courts only apply German law?

No. Under certain conditions German courts will apply foreign law.

H. Arbitration and Mediation in Germany

I. Can foreign attorneys represent foreign clients in German arbitration or mediation proceedings?

Yes.

II. Is Arbitration or Mediation binding in Germany?

No.

III. Does Arbitration or Mediation often happen in Germany?

No, because court proceedings are relatively cheap and are regarded as a reasonably efficient and effective means of resolving disputes.. The existence of a highly developed system of specialized subject matter courts is also a factor.

I. Power of a German Attorney out-of-court

Limited. No depositions are permitted. An attorney cannot enforce anything without the involvement of the authorities or of a court. However, German attorneys can accomplish binding settlements with opposing attorneys that can later be directly enforced.

GREECE

A. Court System

I. In general

The Greek legal system belongs to the Civil Law tradition prevalent in continental Europe and is particularly influenced by German civil law. Civil Procedure in Greece is governed by rules set out in the Greek Code of Civil Procedure (CCP). According to the CCP, there are two levels of jurisdiction:

i) First Instance Courts. Which of the three types of court of first instance will hear a case is determined mainly by the value of a claim, but, in some cases, the nature of the dispute is also a factor (matters pertaining to family, employment, personal status etc.) . Claims are divided in monetary terms as follows: the Court of Peace takes claims < 20,000.00 €, the Single-Member Court of First Instance hears claims between 20,000.00€ and 120,000.00 while claims exceeding 120,000.00€ fall within the jurisdiction of the Multi-Member Court of First Instance.

ii) Appellate Courts. In addition to its original jurisdiction, the -Single Member Court of First Instance hears appeals from decisions of the Courts of Peace. The Court of Appeal is the appellate court for all other matters.

The Supreme Court, which sits in Athens, is a Court of Cassation that rules strictly on questions of law, namely it reviews the application and interpretation of specific aspects of law implicated in a dispute and lower decision, and may not go into the substance (facts) of a case file. If it concludes that a lower court violated either the law or principles of the procedure, then the Supreme Court can order the case reheard.

II. Specialized courts available?

There are no specialized civil courts available in Greece. By virtue of an internal organization regulation, the foregoing civil courts are divided in some sort of "chambers" on the grounds of the nature of disputes brought before them (i.e commercial disputes, matrimonial /family, labor, lease etc). However, that does not imply a specialization of the judges on the area of law involved in each chamber they participate in, but serves mostly practical and procedural reasons.

Trademark Courts existing in Greece, pertain to the Administrative and not to Civil Jurisdiction, as one might have expected. The Competition Commission is an independent public body (administrative authority) which conducts in-depth inquiries into mergers, cartels and antitrust practices in the market.

B. Do all Greece provinces apply the same Law?

All courts throughout the entire territory of Greece apply the same laws.

C. Costs of a Civil Lawsuit in Greece

The main costs incurred by civil court proceedings are court expenses and lawyers' fees.

I. Court Fees

1.1. The amount of court fees depends mainly on the amount of the claim involved or the nature of the dispute / procedure.

(a) Stamps. These are affixed on all legal writs (lawsuit, appeals, petitions etc.), originals and official copies upon their filling and range between €0.50 to €10 per writ.
(b) Court duties. The plaintiff when seeking payment of an amount of money must pay (in the first Instance Courts) a duty at the rate of approximately 0.8‰ on the amount sought.
(c) Lamb sum retained by Bar Association in favor of third parties (15% tax and 12% for Social Security Funds) on a minimum legal amount of lawyer's fees (regardless of actual lawyer's fees) as set forth by pertinent decree.

1.2. Do the court fees have to be paid in advance to the court?

Yes. These fees are paid by the parties the latest upon the hearing of the dispute. Full payment of all court fees is a prerequisite for the Court to render its decision. Court duties, which are borne solely by the plaintiff (b), may be reimbursed to the plaintiff by a defendant if the plaintiff's claims are upheld—see 3. below.

1.3. There is no court fee reduction in case of a settlement that occurs after the hearing.

II. Attorney Fees

These are regulated by law only in the absence of a proven agreement between the lawyer and the client and in respect of collecting the aforementioned lamb sum (1.c). If no such agreement can be proved, statutory minimum legal fees apply. In practice, fees are freely negotiated between the client(s) and the lawyer and each litigant party bears the costs of his own lawyer. Recently lawyers' fees have become subject to a 23% Value Added Tax (sales tax) surcharge.

III. Does the loser of the lawsuit have to compensate the winner for the court fees and (minimum) attorney fees?

The defeated party is usually ordered by ruling of the Court to bear court fees and expenses relating to the proceedings. However, the legal costs awarded to the winning party are restricted (they represent 2% of the claim) and they definitely do not cover lawyer's fees. Notwithstanding the above, the Court may set-off the court expenses between the parties, in the event that it considers that the outcome of the proceedings was fairly contested and the merits split or ambiguous.

D. Are Greek Courts regularly fair to Foreign Parties?

In conformity with the Constitution and art. 4 of the Civil Code, Greek and foreign nationals are treated equally by Greek Courts.

E. Enforcement of a Greek Verdict in Greece

I. In case certain property of the debtor is known

Final judgments (i.e. those which have been considered on appeal and those which have not been appealed within the prescribed time limits) as well as first instance judgments which have been issued as provisionally

enforceable, can be immediately enforced especially when certain property of the debtor is known. The enforcement can only commence through the service to the defeated party of the executory engrossment *("ektelesto apografo")*. If the losing party fails to obey the executory engrossment, enforcement proceedings (seizure of assets, auction etc.) may be initiated.

If a foreign judgment comes from a court of an EU member state the following options exists in terms of the enforcement thereof:

2.1. Regulation 805/2004 on the creation of a European enforcement title for uncontested claims may be applied. In fact, the said Regulation is applicable in all member states of the EU – with the exception of Denmark – and abolishes under certain conditions, all intermediary measures in the Member State where enforcement is sought, which were previously necessary to that end. This new procedure/title allows the creditor to succeed a prompt and effective enforcement without the intervention of the Courts of the member state where enforcement is to take place, which involved long and onerous formalities. A key word for the application of the foregoing regulation is the use of the term «uncontested claim» as specifically defined in the regulation 805/2004. The regulation sets forth quite strict rules for the commencement of the procedure and for the notifications required always paying respect to the rights of defense of the debtor.

2.2. In the event regulation 805/2004 may not be applied in a particular case, enforcement of a decision rendered by the Courts of one member state may be also effected in another member state according to the provisions of regulation 44/2001. The duration of procedure under regulation 44/2001 may be roughly estimated from 3 to 4 months, if the debtor does not file the recourse provided for in the regulation before the Court of Appeal. If it does (file the recourse) it may even take 10 to 12 months before obtaining an enforceable title.

II. What kind of investigative power do the enforcement officials have?

The enforcement officials, namely the bailiff and the notary public who is in charge of the auction procedure have limited or none (as far as the notary is concerned) investigating powers. The attorney identifies the property by conducting pertinent searches in public Registers, such as Mortgage Offices or the Cadastre, wherever it exists. The bailiff acts for the seizure of the property on the instructions and orders of the attorney.

III. **Enforcement Costs**

The enforcements costs are entirely borne by the debtor though they are paid in advance by the creditor. They are either reimbursed by the debtor to the creditor if he succeeds to stop the enforcement proceeding or they are retained in his account by the product of the auction.

F. Enforcement of a Foreign Verdict in Greece

I. Is an acknowledgement proceeding before a Greek court necessary?

To answer this question one must make the distinction between judgments rendered by Courts of EU member states and by Courts of third countries.

2.1. Judgments originating from EU member states Courts.

Pursuant to the provisions of EU Regulation 2001/44/EC a judgment rendered in an EU member state is recognized in Greece without any special procedure being required. A judgment will not be recognized if such recognition is manifestly contrary to public order in Greece; the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his/her defense; it is irreconcilable with a judgment given in a dispute between the same parties in Greece; it is irreconcilable with an earlier judgment given in another EU or non-EU country involving the same cause of action and the same parties.

2.2. Judgments given by the Courts of non EU countries

Save as otherwise may be provided by bilateral or multilateral Conventions, a foreign judgment given by the Courts of a third (non EU) country may be recognized in Greece pursuant to the provisions of article 323 CCP and provided that the conditions set forth therein apply.

II. Under what conditions can a non-EU foreign verdict be acknowledged in Greece?

A judgment given by the Court of a non-EU foreign country may be recognized in Greece, as aforementioned and especially if it meets the requirements of article 323 CCP. Namely, that (i) it has the force of estoppel in the country in was rendered; (ii) the courts of such country had jurisdiction to rule on the case; (iii) the defendant was not deprived of right to defend himself; (iv) it is not irreconcilable with a judgment given in a dispute between the same parties in Greece; (v) it is not manifestly contrary to the public order in Greece.

III. Costs for acknowledgement proceeding

See above under C 1.

IV. Enforcement of the Greek acknowledgement verdict in Greece.

See above under 5 IV.

3. Conflict of laws: Do Greek courts only apply Greek law?

Greek Courts may and do apply foreign law namely the law of a foreign country that is indicated as applicable on a dispute a) according to the rules of conflict set forth in articles 5- 33 of the Greek Civil Code and the international conventions Greece has adhered to, provided that the provisions of foreign law are not contrary to Greek public order and good morals (art. 33 of the Civil Code); b) according to the common will of the parties, namely the law the parties have chosen as applicable by common decision, provided again that the provisions of such foreign law are not contrary to Greek public order. According to art. 3 of the Greek Civil Code individuals cannot contract to exclude the application of rules of public order.

H. Arbitration and Mediation in Greece

I. Can foreign attorneys represent foreign clients in Greek arbitration or mediation proceedings?

Yes.

II. Is Arbitration or Mediation binding in Greek?

Arbitration and Mediation proceedings are optional in Greece. They do not form part of court procedures and therefore, its use cannot be compelled, but must be mutually agreed upon by the parties. On the other hand

the arbitral awards cannot be appealed but can be annulled if certain public policy considerations are present. The role of the arbitrator is passive and the parties determine what documents are to be disclosed.

Arbitration is the most commonplace form of alternative dispute resolution used in Greece and is regulated by articles 876 GCCP onwards. Provided an arbitration clause exists in writing, or no objection is raised by the parties when appearing before the arbitrator, then all private disputes (except for employment disputes and applications for interim measures) may be resolved via arbitration.

By virtue of a very recent law (3898/2010), mediation was introduced as an alternative dispute resolution mechanism in Greece, in compliance with the provisions of the EU Mediation Directive 2008/52/EC. This new law enables the parties to a dispute to submit to mediation at any stage of the dispute. The scope of the law covers all cross-border disputes whether deriving from litigation or arbitration.

III. Does Arbitration or Mediation often happen in Greece?

Although it is undoubted that the option of mediation is gaining ground fast, mediation still represent a very small fraction of dispute resolution in comparison to the number of cases introduced before the ordinary Courts. Arbitration, on the other hand, is certainly more widely known and established. It is often stipulated as the dispute resolution mechanism by private agreements.

A significant downside to the choice of arbitration is the fact that it is considerably more expensive than ordinary litigation. This is the main reason for which it has not gained the ground that one would have expected considering its advantages.

As far as mediation is concerned, perhaps the greatest significance of its introduction in the Greek legal system is its potential to become an affordable alternative to court resolution, and thus alleviate the pressure on a judicial structure judicial system currently bogged-down by an excessive case-load.

I. Power of a Greek Attorney out-of-court

A Greek attorney cannot enforce anything without the intervention of the authorities or the powers awarded to him/her by virtue of a Court order.

HUNGARY

A. Court System

I. In general

Local Court (helyi bíróság) → County Court (megyei bíróság) → Regional Courts of Appeal (ítélőtábla) → Supreme Court (Legfelsőbb Bíróság).

II. Specialized courts available?

Yes, but there are only a few specialized courts (such as Labor Courts).

At the county court level, special colleges are set up for solving legal disputes in administrative law matters, i.e. when an individual or a company challenges the resolution by a government agency.

B. Is there a unified law system in Hungary?

Yes. There is a unified law system in Hungary. All courts in Hungary apply the same law.

C. Costs of a Civil Lawsuit in Hungary

I. Court Fees

(1) The court fees depend mainly on the amount at stake in a lawsuit.

Court proceedings may be instituted by paying in 6% of the amount claimed, but not exceeding EUR 3,600. This is the cost of the proceedings of first instance. The decision of the court of first instance may be appealed by any of the parties, paying in also 6% stamp duty; the decision of the court of second instance is final and absolute. Accelerated proceedings may be commenced by paying only 3% of the amount claimed, but if the Defender opposes acceleration, the fees must be supplemented to the full 6% and afterwards the proceedings go on as described above.

(2) Do the court fees have to be paid in advance to the court?

Generally, yes. However, there are lots of exemptions (such as proceedings before the Labor Courts).

(3) Is there a court fee reduction in case of a settlement?

Yes.

(4) Other costs which may arise in connection with a civil lawsuit.

Other costs may arise in connection with a civil lawsuit, such as cost of the forensic expert and translation cost.

II. Attorney Fees

(1) Is there binding law for out-of-court attorney fees?

No. Can be freely negotiated. The agreement between the attorney and the client should be taken into consideration by the court, if filed. If no agreement exists, or such agreement has not been filed, then there are some guidelines that are binding only in determining the minimum fees. However, the courts might alter from these principles. If the court is required to decide over the attorneys' fees in out-of-court proceedings they are generally half of the same in court proceedings (see clause (2) below). For the purposes of this section, "out-of-court proceedings" means the courts make a decision, but without holding a hearing, and based only on documents filed.

(2) Is there binding law for attorney fees for representation in a court proceeding?

No. Can be freely negotiated. The agreement between the attorney and the client should be taken into consideration by the court. If no agreement exists, then there are some non-binding guidelines recommended in separate legal regulation on attorneys' fees.

Recommended attorney fees:

I> If the claimed amount is less than EUR 40,000 → attorneys' fees: 5% of the claimed amount.
II> If the claimed amount is between EUR 40,000 and EUR 400,000 → attorneys' fees: 5% of the claimed amount up to EUR 40,000, and 3 % of the claimed amount over EUR 40,000.
III> If the claimed amount is more than EUR 400,000 → attorneys' fees: same as b) above, plus 1% of the claimed amount over EUR 400,000.

Higher attorney fees can be agreed upon by the client and the attorney.

As regards the attorney fees for a civil process, there are two main schemes:
- either a fixed hourly rate;
- a combination of a retainer fee and a success fee; the latter would depend on the outcome of the case.

III. Does the loser of the lawsuit have to compensate the winner for the court fees and attorney fees?

Generally, yes. The losing party is obliged to bear also the costs of the proceedings, including the court fees and legal fees established by the court. There are a few exemptions, such as cases of family law.

D. Are Hungarian Courts regularly fair to Foreign Parties?
Yes.

E. Enforcement of a Hungarian Verdict in Hungary

I. In case certain property of the debtor is known
Direct seizure of this property with the help of bailiff and authorities is possible.

II. What kind of investigative power do the enforcement officials have?
Bailiff has direct access to the public registers, for example land registry and vehicle registry. The assets of the debtor will be seized and exploited by the bailiff.

III. Enforcement Costs
The court fees are 1% of the claimed amount. The bailiff may require additional costs in advance. Debtor has to compensate creditor for these costs.

F. Enforcement of a Foreign Verdict in Hungary

I. In case of a verdict of a court or other authorities of an EU member state is an acknowledgement proceeding before a Hungarian court necessary?

No, for all verdicts within the EU. See Regulation (EG) No. 44/2001. This Regulation governs the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. According to this Regulation, a judgment rendered in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

II. Under what conditions can a non-EU foreign verdict be acknowledged in Hungary?

No special procedure is necessary for recognition of an official foreign decision. Unless otherwise prescribed by law, this matter shall be resolved by the proceeding court or authority.

(1) The decisions of foreign courts and other foreign authorities shall be recognized, if:
a) the jurisdiction of the court or authority in question is found legitimate under the rules of jurisdiction of Hungarian law;
b) the decision is construed as definitive by the law of the state in which it was made;
c) there is reciprocity between Hungary and the state of the court or authority in question;
d) neither of the grounds for denial defined under Subsection (2) prevail.

(2) An official foreign decision shall not be recognized, if:
a) doing so would violate public order in Hungary;
b) the party against whom the decision was made did not attend the proceeding either in person or by proxy because the subpoena, statement of claim, or other document on the basis of which the proceeding was initiated was not served at his domicile or residence properly or in a timely fashion in order to allow adequate time to prepare his defense;
c) it was based on the findings of a procedure that seriously violates the basic principles of Hungarian law.

II. Under what conditions can a non-EU foreign verdict be enforced in Hungary? In this case which process is required?

The resolutions of foreign courts and foreign arbitration tribunals (hereinafter referred to collectively as "foreign resolution") shall be executed on the basis of law, international convention or reciprocity. The resolution of a foreign court may be executed if, according to its nature, it is
(i) on the basis of a court verdict in a civil case,
(ii) on the basis of the clause of a court verdict in a criminal case to award judgment for the civil law claim,
(iii) on the basis of a court-approved settlement.

When filing for enforcement, the judgment creditor shall enclose the foreign resolution to be executed, and a Hungarian translation thereof if requested by the court. In respect of a foreign resolution that may be executed the court shall adopt a ruling of confirmation of enforcement for such foreign resolution in which to confirm that it may be executed in accordance with Hungarian law the same way as a decision of a Hungarian court (arbitration court). After the decree has become definitive, on the basis of a foreign resolution confirmed for enforcement the court shall issue a certificate of enforcement, or an enforcement order of the same function. In the course of enforcement of a foreign resolution the provisions set forth in specific other legislation and in the international conventions shall also be applied, and jurisprudence based on reciprocity shall also be taken into consideration.

IV. Costs for acknowledgement and enforcement proceeding
The acknowledgement and enforcement proceedings shall be exempted from court fees.

V. Enforcement of the Hungarian acknowledgement verdict in Hungary
See above under E.

G. Conflict of laws: Do Hungarian courts only apply Hungarian law?
No. Under certain conditions Hungarian courts would apply foreign law. For example, if the law of a country other than Hungary is stipulated in the contract concerned, or if application of a foreign law is required under mandatory provisions of international private law (e.g. Rome Treaties).

H. Arbitration and Mediation in Hungary
I. Can foreign attorneys represent foreign clients in Hungarian arbitration or mediation proceedings?
Yes.

II. Is Arbitration or Mediation binding in Hungary?
No.

III. Does Arbitration or Mediation often happen in Hungary?
No, because court proceedings are relatively cheap and the verdict of the arbitration court is final and absolute so neither party may appeal against the verdict.

I. Power of a Hungarian Attorney out-of-court

Limited. Cannot enforce anything without the help of the authorities including Notary Public or of a court.

JAPAN

A. Court System

I. In general

The Japanese civil procedure was developed in the early 1900's, primarily based upon the German civil law model. While influenced by some aspects of American law, particularly in relation to aspects of the Companies Act, the Japan continues to operate on a civil law model under three-tiered judicial system:

District Court (First trial) → High Court (Koso-appeal) → Supreme Court (Jokoku-final appeal)

Summary Court (First trial) → District Court (Koso-appeal) → High Court (Jokoku-final appeal)

* The Summary Court has jurisdiction for lawsuit with amount of less than 1,400,000 Japanese Yen at stake.

II. Specialized courts available?

Yes.

Examples:
Family Courts, Intellectual Property High Court

- The Family Courts
  Family Courts hear matters involving children and families such as domestic adjudications, family conciliation, and juvenile trials.

- The IP High Court
  The IP High Court specializes in intellectual property cases. It has jurisdiction over such cases where specialized knowledge is required. Appeal is to the Supreme Court.

The IP High Court has an exclusive jurisdiction over the following two types of action:

1. All actions challenging trial decisions made by the Patent Office (in this case, the IP High Court would take the case from the outset, rather than a district court.)

2. All appeals against judgments rendered by district courts in actions defined by the Code as possessing inherent IP implications, such as patent rights, utility model rights, etc. (The categories are defined by the Code).

Additionally, the IP High Court also takes all appeals from district courts within the jurisdiction of the Tokyo High Court that raise IP issues.

B. Do all prefectures in Japan apply the same law?

Yes. All courts in Japan apply the same civil and criminal law.

C. Costs of a Civil Lawsuit in Japan

I. Court Fees

(1) Court fees depend mainly on the amount which is at stake in a lawsuit.

Examples:

First Trial
1,000,000 Japanese Yen at stake → court fees: 10,000 Japanese Yen
10,000,000 Japanese Yen at stake → court fees: 50,000 Japanese Yen
100,000,000 Japanese Yen at stake → court fees: 320,000 Japanese Yen

Koso-Appeal
1,000,000 Japanese Yen at stake → court fees: 15,000 Japanese Yen
10,000,000 Japanese Yen at stake → court fees: 75,000 Japanese Yen
100,000,000 Japanese Yen at stake → court fees: 480,000 Japanese Yen

Jokoku-final Appeal
1,000,000 Japanese Yen at stake → court fees: 20,000 Japanese Yen
10,000,000 Japanese Yen at stake → court fees: 100,000 Japanese Yen
100,000,000 Japanese Yen at stake → court fees: 640,000 Japanese Yen

(2) Do court fees have to be paid in advance to the court?

Yes.

(3) Is there a court fee reduction if there is a settlement?

No.

II. Attorney Fees

(1) Is there any law which governs out-of-court attorney fees?

No, such fees can be freely negotiated.

(2) Is there any law which governs attorney fees for representation in a court proceeding?

No, such fees can be freely negotiated.

III. Does the loser of a lawsuit have to compensate the winner for court fees and (minimum) attorney fees?

Attorney fees: No.
Court fees: Yes.

The loser has to compensate the winner for court fees and other expenses.

D. Are Japanese Courts regularly fair to Foreign Parties?

Yes.

E. Enforcement of a Japanese Verdict in Japan

I. If certain property of the debtor is known

Direct seizure of this property is possible with the help of enforcement officials.

II. What kinds of investigative powers do the enforcement officials have?

After a creditor who has a title of debt (Saimumeigi) applies for an investigative procedure, Courts may require the debtor to provide a list with his assets.

III. Enforcement Costs

Court fees: Usually about 10,000 Japanese Yen. The debtor has to compensate the creditor for these costs. Associated attorneys fees can be freely negotiated.

F. Enforcement of a Foreign Verdict in Japan

I. Is an acknowledgement proceeding before a Japanese court necessary?

Yes. The foreign verdict needs to be acknowledged by a Japanese court.

II. Under what conditions can a foreign verdict be acknowledged in Japan?

(1) The foreign verdict must be a final judgment.
(2) The jurisdiction of the foreign court must be recognized by laws and ordinances, or treaties.
(3) The defendant must have received service of a summons or orders necessary to commence procedures, or has responded to the action without receiving such services.
(4) The foreign verdict must not relate to a violation of public order in Japan.
(5) A reciprocal guaranty must exist.

III. Costs for acknowledgement proceeding

See above under C.

IV. Enforcement of the Japanese acknowledgement verdict in Japan

See above under E.

G. Conflict of laws: Do Japanese courts only apply Japanese law?

No. Under certain conditions Japanese courts would apply foreign law.

H. Arbitration and Mediation in Japan

I. Can foreign attorneys represent foreign clients in Japanese arbitration or mediation proceedings?

No. Foreign attorneys may only represent parties in international arbitration cases, and may only do so then if the foreign lawyer has been granted registered foreign lawyer status in Japan.

Representation by a Japanese lawyer is permitted in both arbitration and mediation. Whether such representation is advisable depends upon parties and type of dispute.

II. Is Arbitration or Mediation binding in Japan?

Yes.

III. Does Arbitration or Mediation often happen in Japan?

Yes. In some cases, it is required by law to take mediation procedure before filing a case in the Court. For example, a divorce case has to first be held by way of a mediation procedure.

I. Power of a Japan Attorney out-of-court

Limited. Attorneys cannot enforce anything without the help of the authorities or of a court.

THE NETHERLANDS

A. Court System

I. In general

The highest court of The Netherlands is the Supreme Court (*Hoge Raad der Nederlanden*). The Netherlands is divided into five areas of Court of Appeal (*Gerechtshof*). These areas are, in turn, divided into 19 districts, each with its own court (*Rechtbank*). Each of these District Courts has a number of subdistrict venues (*sector Kanton*), each with a Subdistrict Court.

Each District Court includes the civil sector, the criminal sector, the administrative sector and the subdistrict sector. The Subdistrict Courts specifically deal with money claims up to and including an amount of EUR 25,000 and with cases regarding employment law, rental/lease law and consumer contracts. The (Sub)District Courts function as courts of first instance where the facts of a dispute are established and decisions are made. Cases before a Subdistrict Court are heard by a single judge. Cases before a District Court are either heard by a single judge or by three judges.

The Courts of Appeal take appeals of rulings from both the Subdistrict and District Courts. Cases before the Courts of Appeal are heard by a panel of three judges. Court of Appeal rulings are appealable to the Supreme Court (cassation). The Supreme Court only examines whether the lower courts have applied the law correctly. Unlike the Subdistrict Court, District Court and Court of Appeal, the Supreme Court does not determine facts of a case. The Supreme Court sets the standard for the application of the law of the Netherlands.

II. Specialized courts available?

Yes.

Examples of specialized courts include:

- The Enterprise Division of the Amsterdam Court of Appeal (*Ondernemingskamer*). (Certain) interested parties of a company can request the Enterprise Division of the Amsterdam Court of Appeal to investigate the policy and affairs of the legal person in question. Rulings of the Enterprise Division of the Amsterdam Court of Appeal are appealable to the Supreme Court (cassation).
- The Central Appeals Tribunal (*Centrale Raad van Beroep*). The Central Appeals Tribunal is the highest judicial authority in matters concerning social security and civil service.
- The Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) hears appeals of decisions in the area of administrative law, thus disputes between citizens and government authorities.
- The Trade and Industry Appeals Tribunal (*College van Beroep voor het Bedrijfsleven*) hears appeals of decisions pertaining to social-economic administrative law.

In a way, the abovementioned Subdistrict Courts can be considered specialized courts as well, as they specifically deal with money claims up to and including an amount of EUR 25,000 and also hear cases regarding employment law, rental/lease law and consumer contracts

B. Do all Dutch provinces apply the same Law?

Yes. All courts in The Netherlands apply the same (civil, administrative, family etc.) law.

C. Costs of a Civil Lawsuit in The Netherlands

I. Court Fees

(1) The court fees depend mainly on the amount of money which is at stake in a lawsuit.

Subdistrict Court (*sector Kanton*)

Type of case	Court fees for enterprises	Court fees for natural persons	Court fees for persons of limited means
Claim or request: * of unlimited value * with the principal claim less than EUR 500	EUR 106	EUR 71	EUR 71
Claim or request ranging from EUR 500 up to EUR 12,500	EUR 426	EUR 202	EUR 71
Claim or request exceeding EUR 12,500	EUR 851	EUR 426	EUR 71

District Court (*Rechtbank*, civil-law sector)

Type of case	Court fees for enterprises	Court fees for natural persons	Court fees for persons of limited means
Claim or request of unlimited value	EUR 560	EUR 260	EUR 71
Claim or request: principal claim ranging from EUR 25,000 up to EUR 100,000	EUR 1,744	EUR 800	EUR 71
Claim or request exceeding EUR 100,000	EUR 3,529	EUR 1,400	EUR 71

Court of Appeal (*Gerechtshof*)

Type of case	Court fees for enterprises	Court fees for natural persons	Court fees for persons of limited means
Claim or request: * of unlimited value * principal claim less than EUR 12,500	EUR 649	EUR 284	EUR 284
Claim or request: principal claim ranging from EUR 12,500 up to EUR 100,000	EUR 1,769	EUR 649	EUR 284
(Principal) claim or request exceeding EUR 100,000	EUR 4,713	EUR 1,475	EUR 284

Supreme Court of The Netherlands (*Hoge Raad*)

Type of case	Court fees for enterprises	Court fees for natural persons	Court fees for persons of limited means
Claim or request: * of unlimited value * principal claim less than EUR 12,500	EUR 710	EUR 294	EUR 294
Principal claim ranging from EUR 12,500 up to EUR 100,000	EUR 2,357	EUR 710	EUR 294
(Principal) claim or request exceeding EUR 100,000	EUR 5,894	EUR 1,769	EUR 294

If an objection to a government decision is lodged or if a government decision is appealed, the court fees in first instance are EUR 41 or EUR 152 for natural persons and EUR 302 for legal persons. Fees payable to the Court of Appeal or the Supreme Court are EUR 227 for natural persons and EUR 454 for non-natural persons.

(2) Do the court fees have to be paid in advance to the court?

Yes.

(3) Is there a court fee reduction in case of a settlement?

No.

II. Attorney Fees

(1) Is there binding law for out-of-court attorney fees?

No. They can be freely negotiated.

(2) Is there binding law for attorney fees for representation in a court proceeding?

No.

III. Does the loser of the lawsuit have to compensate the winner for the court fees and (minimum) attorney fees?

Generally, there is no such thing in The Netherlands as a loser-pays system where under the losing party in litigation is required to pay the legal fees and expenses of the winning party. Only in intellectual property cases is a winning party able to claim its lawyer's fees and court fees, unless the court judges these "unfair". In all other cases, the successful party can only recover the court fees and it receives a fixed lump sum of the lawyer's fees (which is a fraction of the actual costs). Each party has to bear their own lawyer's fees.

D. Are Dutch Courts regularly fair to Foreign Parties?

Yes. Dutch and foreign parties are treated equally. However, Dutch is the official court language and all court documents and the hearing must be in Dutch. Therefore, evidence from non-Dutch speaking persons has to be translated by a sworn translator. Sometimes, though, evidence given in English or English speaking witnesses will be accepted at the discretion of the court.

E. Enforcement of a Dutch Verdict in The Netherlands

I. In case certain property of the debtor is known

Direct seizure of this property with the help of enforcement officials (bailiffs) is possible.

II. What kind of investigative power do the enforcement officials have?

Limited. The attorney identifies the property using the public registers. Subsequently, a bailiff is instructed to seize the property.

III. Enforcement Costs

Enforcement costs are relatively low, usually only a few hundred Euros. In principle, the debtor has to compensate the creditor for these costs.

F. Enforcement of a Foreign Verdict in The Netherlands

I. Is an acknowledgement proceeding before a Dutch court necessary?

Yes, but it is a mere formality for verdicts from courts of EU member states. See *Regulation (EG) No. 44/2001*.

II. Under what conditions can a non-EU foreign verdict be acknowledged in The Netherlands?

Verdicts from non-EU member states will be reviewed substantively.

Example: **U.S. verdict**

As the EEX Convention is not applicable and due to the lack of a bilateral treaty between the USA and The Netherlands, it must be determined on the basis of general law if a judgment rendered in the USA will be recognized and enforced in The Netherlands.

In principle, Dutch courts are free to determine in each particular case whether, and to what extent, the authority of a non-EU foreign judgment will be acknowledged. The basic principle is, however, that a non-EU foreign judgment will be acknowledged if it meets three minimum requirements. The first requirement is that the foreign court had the jurisdiction to try the case. The second requirement is that the verdict was reached on the basis of the proper administration of justice. The last requirement is that the judgment must not be contrary to public order. If a non-EU foreign verdict does not meet these minimum requirements, it will not be acknowledged.

III. Costs for acknowledgement proceeding

See above under C.

IV. Enforcement of the Dutch acknowledgement verdict in The Netherlands

See above under E.

G. Conflict of laws: Do Dutch courts only apply Dutch law?

No. Under certain conditions Dutch courts shall apply foreign law.

Pursuant to Article 25 of the Dutch Code of Civil Procedure, the courts must apply the rules of conflict of their own motion (even if the parties do not invoke the rules). If foreign law is applicable, the court must officially

establish the content of the foreign law. Parties are often invited to express an opinion on the foreign law and mostly comply with this request. However, the court itself continues to be responsible for that which it accepts as the content of foreign law.

Foreign law must be disregarded if that law or its application is in contravention of international public order under private law, which is the case if (the application of) the foreign law would infringe the fundamental principles of the Dutch legal system. This rule must be applied in a restrictive manner.

H. Arbitration and Mediation in The Netherlands

I. Can foreign attorneys represent foreign clients in Dutch arbitration or mediation proceedings?

In principle, yes. It depends on what the parties have agreed upon.

II. Is Arbitration or Mediation binding in The Netherlands?

In principle, arbitration is binding; mediation is not binding, unless and until the parties conclude an agreement.

III. Does Arbitration or Mediation often happen in The Netherlands?

It is not unusual for businesses to include arbitration clauses in (major) contracts. Parties agree at the onset that (future) disputes resulting from the contract will be handled by one ore more (in any case an uneven number of) arbiters. Some businesses include in their General Terms and Conditions that (potential) disputes will be subject to arbitration. Parties can also conclude an arbitration agreement when a dispute has arisen. There are various arbitration institutions, such as the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut, NAI*) and the Court of Arbitration for the Building Industry in The Netherlands (*Raad van Arbitrage voor de Bouw*).

I. Power of a Dutch Attorney out-of-court

Limited. A Dutch attorney cannot enforce anything without the help of the authorities or of a court.

ROMANIA

A. Court System

IV. In General

The Romanian legal system is a written law system, based on civil law tradition. The general rules governing civil procedure are the Romanian Constitution, the Romanian Code of Civil Procedure ("CCP"), Law No. 304/2004 concerning the judicial system ("Law No. 304/2004"), Law No. 146/1997 on judicial stamp taxes, Law No. 47/1992 on Constitutional Court and Law No. 188/2000 on court marshals. Additional regulations apply in certain areas of law.

Structure:
The Romanian civil court system consists of courts of law, the Public Ministry (the public prosecutorial aspect of the judicial function), which represents the public interest, performing the accusatorial function on behalf of the state in criminal cases through the offices of its prosecutorial staff and the Supreme Council of Magistracy.

The structure of the courts of law is as follows:

- first instance courts;
- tribunals (organised at the level of each county);
- courts of appeal (having jurisdiction over a number of tribunals); and
- the High Court of Cassation and Justice (the "High Court").

The Romanian legal system distinguishes between lower civil courts (first instance court and tribunals) and higher civil courts (courts of appeal and the High Court), determining jurisdiction by a dual mechanism that takes account of the value of the claim and of the types of cases.

The main stages in Romanian civil proceedings are: first instance proceedings; the appeal (except for certain categories of court decisions, expressly provided by law, which can be challenged only by direct appeal to a court of secondary appeal); and the second appeal.

Process:
Generally, initial and secondary appeals may be filed within 15 days of the parties receiving notice of the decision from which appeal is to be made. In certain areas, the law stipulates different periods of notice for a second appeal of 5 days, 10 days or 30 days from the date when the parties received the court decision (*e.g.*, in insolvency proceedings, a second appeal may be filled within 7-days as of the date of communication to the parties of the court decision).

The limitation period for bringing the proceedings before the civil courts is treated as a substantive law issue. The default limitation period is 3 (three) years from the date the right to claim was triggered. However, the law expressly provides for certain exceptions, such as certain claims on real property, which are, as general rule, indefeasible and thus there is no temporal limitation on when a valid claim may be brought. In addition, for certain categories of claims, the law provides for a suspensive condition or suspensive term (similar to the common law concept of condition precedent), or for the limitation period to be extended to reflect the fact that a party may be unaware of that it has suffered harm, for example, claims related to civil liability for unlawful acts,

Generally, in civil disputes the Code of Civil Procedure does not establish a time limit for the filing of the statement of defence, but in second appeals, the statement of defence shall be filed within at least 5

days before the first hearing. In commercial disputes—a special part of civil law—the general rule is that the statement of defence has to be filed five days prior to the date of the first hearings

A statement of defence is mandatory. Therefore, in case of non-compliance, the defendant has waived his or her right of proposing proofs. However, if the defendant is unrepresented or not assisted by a lawyer, the court shall request the defendant on the date of first hearings to submit its defence pleas and to deliver the evidence supporting his defence.

In the Romanian civil law system, the court plays an active role in the parties' provision of evidence. The court is entitled to propose and administrate any piece of evidence considered relevant to solving the case. It is the parties' responsibility to ensure that they or the court request all relevant proofs on the merits. In the event a proof is not requested, the failure to do so cannot be challenged on appeal

Commercial Claims:
Generally, a creditor may request performance of its obligation from a debtor within 3 (three) years from the date when the payment obligation became due (*see* A.1 above). The claimant is entitled to request that the court approve the establishment of precautionary measures, such as procedural measures ordered with regard to the debtor's assets either during the proceedings or at the enforcement stage, in order to ensure enforcement of the court decision. Precautionary measures are: preventative attachment; judicial attachment; and preventative garnishment. A debtor may file a counterclaim against the creditor

Prior to submitting a commercial monetary claim to a court, the claimant has the obligation to attempt an amiable settlement by conciliation or mediation. In formal conciliation, the claimant shall communicate to the other party an invitation to participate in this procedure together with notice of his or her claims and the respective legal grounds and all supporting documents. The date for the conciliation session shall be no sooner than 15 days after of the date on which the defendant received the documents from the claimant.

V. Are Specialized Courts Available?

Romanian court system includes different specialisations within the courts of law. . The High Court has 4 (four) specialized sections containing a panel of judges that address specific categories of cases. These are: (1) civil and intellectual property, (2) criminal, (3) commercial, and (4) fiscal and administrative claims), The 9 (nine) judges may also sit as a unified, full court panel. The Courts of Appeal have corresponding sections plus additional panels that hear only cases that fall into one of the following categories: minors and family matters, labour disputes and social insurance, maritime and inland waterways matters, or intellectual property cases. A few specialized tribunals have also been created, the majority of which handle commercial cases.

B. Do all Romanian Jurisdictions Apply the Same Law?

Yes. Civil law and criminal law are unitary within Romania. All courts in Romania apply the same civil and criminal law.

C. Costs of a Lawsuit in Romania

I. Court Fees

The costs of civil proceedings are composed of stamp taxes (*Romanian: "taxe de timbru"* and *"timbrul judiciar"*), attorney fees and appraisal fees. As a general rule, stamp taxes apply to all requests, claims, documents and services addressed to the courts.

When submitting an initial claim, the claimant must pay a stamp tax calculated under Law No. 146/1997, as follows:

a) for claims having a monetary content: the tax shall be determined in accordance with the value of claim (progressive tax); this value is affirmed by the party in his claim. If the value is questioned or is evaluated as spurious by the court, the assessment will be calculated based upon default provisions set out in the applicable law; or

b) for claims which do not contain a monetary element, the tax has a fixed value, which varies dependent on the type of claim (from 1 Ron to 78 Ron).

Should the claimant fail to pay such stamp taxes, the sanction is the annulment of the claim.

The stamp taxes for the defendant's counterclaim, the request for intervention of a third party and the warranty claim are determined based upon the same criteria applied to the initial claim.

Upon request by the winning party, a party whose claim is rejected, or against whom the court decision was rendered, shall bear the litigation costs.

As a general rule, payment of the legal fees is required. However, certain categories of claims or persons are exempted from such payment obligations, for example: claims related to labour issues; allowances, damages for bodily harms; adoption, etc. As regards the entities benefiting from the above mentioned exemptions, these include the tutelary authority in matters related to family law, public attorneys, labour unions, consumers' protection agencies.

II. Attorney Fees

a. Is There Binding Law for Out-of-Court Attorney Fees?

Contingency/conditional fee arrangements are permitted under Romanian civil law only as a complementary fee. Therefore a conditional fee arrangement shall not cover the entire activity of the lawyer.

General rules apply on security for costs. For example, an attorney may ask a client for a deposit covering the litigation costs.

b. Is There Binding Law for Attorney Fees For Representation in A Court Proceeding?

The fees for representation in a court proceeding are established by attorney, as a result of client/attorney negotiation. There is no binding law that establishes a minimum or maximum fee for representation in a court procedure.

III. Does the Loser of a Lawsuit Have to Compensate the Winner for the Court Fees and (minimum) Attorney Fees?

Local courts have full power to make rulings on damages/interests/costs of the litigation. Regarding legal costs, the CCP establishes the principle by which the party who lost the case will be ordered to pay all the costs of the litigation, including legal fees incurred by the winning party. However, the court has the right to increase or decrease the costs regarding the lawyer's fee.

D. Are Romanian Courts Regularly Fair to Foreign Parties?

Yes.

E. Enforcement of a Romanian Verdict in Romania

IV. In Case Certain Property of The Debtor Is Known

Domestic final judgments can be enforced on the basis of a certified copy of the enforcement order given by the presiding judge of the court which issued the judgment in the first instance stage.

V. What Kind of Investigative Power Do The Enforcement Officials Have?

In order to determine a debtor's assets, the creditor or his attorney must contact a court marshal. Only the court marshal has investigating power, being able to identify the property by requesting data from the Local Taxes Directorate and public Registers, such as National Agency for Cadastre and Land Registration. However, the court marshal shall conduct the enforcement procedure under the instruction of the lawyer.

VI. Enforcement Costs

The costs of the enforcement procedure are composed of court marshal fees and attorney fees. The court marshal fees are governed by Order no. 2550/2006 *regarding the minimum and maximal fees for the services provided by a court marshal*, and may vary from 20 Ron to 10% of the of the value of the receivable, if such receivable exceed a certain limit.

F. Enforcement of a Foreign Verdict in Romania

I**f a j**udgment was rendered by a court of an EU Member State where the Brussels Convention applies, the enforcement of such foreign judgment in Romania is governed by the provisions of such Brussels Convention. Furthermore, as a member of the Brussels Convention, Romania also applies the provisions of the Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

V. Is an Acknowledgement Proceeding Before Romanian Court Necessary?

The answer to this question depends upon whether judgment was rendered by a Court within an EU member state.

II. Under What Conditions Can A Non-EU Foreign Verdict Be Acknowledged in Romania?

Regarding non-EU judgments, Law no. 105/1992 regarding Private International Law is applicable, unless other international conventions to which Romania is a party do not provide otherwise (*e.g.*, the treaty between Romanian and Albania, which entered into force in 1990). The recognition and enforcement of such non-EU judgments is possible, if the following cumulative conditions are met:

(i) the judgment is final and enforceable in the country where it was rendered and it was issued by a court that had jurisdictional competence;
(ii) there is reciprocity regarding the recognition and enforcement of court decisions between Romania and the country where the judgment has been rendered;
(iii) the judgment was not fraudulently obtained;

(iv) the judgment does not violate the principles of public order applicable in accordance with the Romanian law;
(v) a Romanian court has not rendered a decision in the same matter prior to the date of submission of such foreign judgment; and
(vi) the 3-year limit for performance of such enforcement has been complied, unless otherwise provided.

G. Conflict of Laws: Do Romanian Courts Only Apply Romanian Law?

No. Under certain condition Romanian courts will apply foreign law.

H. Arbitration and Mediation in Romania

The most used method of dispute resolution in Romania is litigation before courts of law.

Arbitration is an alternative method for the settlement of disputes and is used particularly in the business field. The CCP enables the parties to appoint the arbitrators. The parties are free to choose the form of arbitration or the body under which arbitration shall take place.

Mediation is a new form of alternative dispute resolution (it appeared in Romania in 2006). Under mediation, parties have the possibility of resolving, in a short period of time, minor disputes, without involving the courts of justice. In this case, the judge may propose a mediation meeting, in which the parties may be informed about the process and advantages of the mediation. The information meeting is free of charge. During such proceeding, any kind of limitation term is adjourned for a maximum of 3 months, beginning from the moment the mediation is initiated.

The institution of the Ombudsman (*Romanian: "Avocatul Poporului"*) was founded in order to settle in an amiable way the disputes between individuals and the public administration, by mediation or dialogue.

As a general rule, the Romanian legislature has permitted any disputes classified as patrimonial rights issues to be transferred to arbitration/mediation proceedings. Patrimonial proceedings encompass aspects of what is considered probate or estate law in other jurisdictions. However, the scope of the arbitration/mediation option is limited: this option is expressly not available for tights that are closely related, but which to not fall within the category of patrimonial disputes as defined by the Romanian legislature. In marital status matters, for example, disputes regarding the custody of children after a divorce fall within the non-patrimonial category, and hence must be brought before a court of law. There are also other specific areas of law in which the law bars settlement of a dispute through arbitration, a notable example being employment disputes.

The major dispute resolution institutions in Romania are the courts of justice, the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, the courts of commercial arbitration attached to the Chamber of Commerce and Industry of each county and the mediation centres from each county.

I. Can Foreign Attorneys Represent Foreign Clients in Romanian Arbitration or Mediation Proceedings?

There is no interdiction preventing a foreign attorney to represent foreign clients in an international arbitration procedure held in Romania.

II. Is Arbitration or Mediation Binding in Romania?

Arbitral decisions are binding and enforceable. Arbitral decisions may be annulled if certain strict requirements are met according to the provisions of the CCP (*for example,* the lack of an arbitral agreement or the arbitral decision does not contain an adequate explanation for the rationale underpinning the conclusions reached. Therefore, it is quite difficult to obtain the annulment of an arbitral decision.

Regarding the mediation procedure, the law does not allow the mediator to issue a decision which may be enforced by the parties. To render the outcome binding, parties must reflect the mediation outcome in an agreement, equivalent to a contract, which they must then sign.

III. Does Arbitration or Mediation Often Happen in Romania?

There has been noticeable growth in the use of arbitration proceedings. Parties are more willing to rely on decisions issued by arbitrators, as in most cases, arbitrators are reputable practitioners of the law and arbitration proceedings are less time-consuming than litigation before courts of law.

Moreover, there are particular areas of law where the Romanian legislature has established compulsory mediation proceedings before a public notary (*e.g.*, divorce proceedings and non-business-related areas of law).

I. Power of a Romanian Attorney Out-of-Court

In Romania, an attorney can provide legal opinion and represent or assist his client in different legal matters. The attorneys have no law-enforcement authority.

SWITZERLAND

A. Court System

I. In general

Switzerland is a federal republic consisting of 26 Cantons. There are many Cantonal District Courts *(Bezirksgerichte)* → 26 Cantonal High Courts (*Obergerichte*) → and one Swiss Federal Supreme Court (*Bundesgericht).* The latter is divided in three departments:

a. The Federal Supreme Court (in Lausanne and Luzern)
b. The Federal Criminal Court (in Bellinzona)
c. Federal Administrative Court (currently in Bern but set to move to St. Gallen in 2012)

II. Specialized courts available?

Yes. The Swiss Civil Procedure Code (SCPC) allows the formation of specialized courts such as, for example, commercial courts. So far, four Cantons (Zurich, Bern, St. Gallen, and Aargau) have established special commercial courts. Among these, the Commercial Court of the Canton of Zurich is generally acknowledged to be pre-eminent, due to Zurich's strong position in national and international commerce.

Other Examples:
Labour Courts, Real Estate Lease Courts.

B. Do all Swiss Cantons Apply the Same Law?

In civil and criminal matters, yes. Civil and criminal laws are federal laws. All courts in Switzerland apply the same civil and criminal laws. Most administrative and procedural laws, by contrast, are Cantonal and quite diverse.

The 26 Cantons are autonomous in the administration of justice. For instance, Cantonal law continues to determine the composition of the different courts, as well as the costs of proceedings and whether or not there may be non-lawyers acting as judges.

C. Costs of a Civil Lawsuit in Switzerland

I. Court fees

(1) The Cantons fix the amount of court fees by statute. There are also multilateral treaties *(e.g. the Hague Convention of 1954 on Civil Procedure, the Hague Convention of 1980 on International Access to Justice),* ensuring that parties who are nationals, or who are domiciled in a member state, are not subject to discriminatory treatments in terms of access to justice, including court fees, cost advances and cost reimbursements.

In financial disputes, court fees normally depend on the amount in dispute. Other factors may have an impact, such as the type of procedure, the complexity of the case and the time spent by the court on the matter.

Examples: Minimum court fees for financial disputes in civil procedures

Zurich District Court level (*Bezirksgericht*) and Zurich High Court level (*Obergericht*)
10,000 CHF at stake → court fees: 1,750 CHF
100,000 CHF at stake → court fees: 8,750 CHF

1,000,000 CHF at stake → court fees: 30,750 CHF

Federal Supreme Court level (*Bundesgericht*)
10,000 CHF at stake → court fees: 500 CHF
100,000 CHF at stake → court fees: 2,000 CHF
1,000,000 CHF at stake → court fees: 7,000 CHF

If a person is awarded legal aid, it is exempt from the payment of court costs, and the court appoints a lawyer to act on his/her behalf, provided such is necessary for the protection of his/her rights. The award of legal aid does not, however, exempt the beneficiary from paying the opponent's attorney's fees in case the lawsuit is lost. In addition, legal aid may only be awarded to natural persons and not to legal entities.

(2) Do court fees have to be paid in advance to the court?

For foreign parties, in principle: yes. The issue of cost advances is governed by the *Swiss Civil Procedure Code*. Courts generally request Claimants (and Counterclaimants) to post a deposit for the estimated court costs (and, upon request, even the opponent's legal fees). Such is the case, for instance, if Claimant/Counterclaimant:

- has no registered office or domicile in Switzerland;
- appears to be insolvent, especially if bankruptcy or composition proceedings have been initiated against the plaintiff or certificates of unpaid debt exist;
- owes legal costs from previous litigation; or
- other grounds exist which would significantly compromise the payment of compensation to the opposing party.

(3) Is there a court fee reduction in case of a settlement?

Yes. Unless the law provides otherwise, in case of a settlement the court will terminate proceedings and will assess court costs. Courts have unfettered discretion to determine the appropriate level of costs to impose.

II. Attorney fees

(1) Is there a binding law for fixing attorney fees *prior to a court case*?

No. Out-of-court fees may be freely negotiated, sometimes following non-binding guidelines of local bar associations.

(2) Is there a binding law for fixing attorney fees *within court proceedings*?

Yes. Most Cantons stipulate minimum attorney fees by statute. Higher attorney fees may be freely agreed upon. Hourly fees are often agreed, using cantonal statutory minimums as a floor to the fees.

Swiss attorneys and their clients are prohibited from entering into contingent fee arrangements, i.e. to make the payment of fees fully dependent on the outcome of the case (the so-called *"pactum de quota litis"* is not permissible). However, since relatively recently, the arrangement of incentive payments based upon success (a so-called "*pactum de palmario"*) has been permitted. Under such an arrangement, a base fee is set and higher fees are agreed upon in the event of success. However, in order to conclude a legal *pactum de palmario*, the minimal hourly fees set must at least cover all attorney costs.

In addition, it is , in principle, possible for litigation to be financed by a third party (generally a specialised financial institution), which commits to covering the costs as they arise in return for a fee on success fee. Litigation funding is not admissible if the underlying arrangement risks calling the attorney's independence into question.

Examples: Minimum attorney fees for financial disputes in civil procedures

Zurich District Court level (*Bezirksgericht*) and Zurich High Court level (*Obergericht*)
10,000 CHF at stake → attorney fees: 2,400 CHF
100,000 CHF at stake → attorney fees: 10,900 CHF
1,000,000 CHF at stake → attorney fees: 31,400 CHF

Federal Supreme Court level (*Bundesgericht*): appeals procedure
10,000 CHF at stake → attorney fees: 600 CHF
100,000 CHF at stake → attorney fees: 5,000 CHF
1,000,000 CHF at stake → attorney fees: 8,000 CHF

Federal Supreme Court level (*Bundesgericht*): claim procedure
10,000 CHF at stake → attorney fees: 1,800 CHF
100,000 CHF at stake → attorney fees: 8,000 CHF
1,000,000 CHF at stake → attorney fees: 16,000 CHF

III. Does the loser of a lawsuit have to compensate the winner for court fees and (minimum) attorney fees?

Yes. Court fees, as well as all other expenses arising from the litigation, including the opponent's attorney fees, shall be borne by the losing party.

If a party prevails only in part, the fees and expenses will be assessed proportionately between the parties.

D. Are Swiss Courts Regularly Fair to Foreign Parties?

Yes. There is no discrimination allowed against foreign parties.

E. Enforcement of a Claim or a Swiss Verdict in Switzerland

I. In case property of the debtor is known

Monetary claims and domestic monetary judgments are enforced in an expedited procedure under the *Federal Debt Collection and Bankruptcy Act*. Depending on whether or not the debtor is registered in the commercial register, the procedure may result in a bankruptcy or in the seizure of assets (enforced collection and recovery).

Non-monetary claims and judgments are enforced according the *Swiss Civil Procedure Code*. A party's refusal to comply with a judgment is considered contempt of court and is punishable, sometimes even with criminal sanctions.

II. What kind of investigative power do the enforcement officials have?

Investigative measures of private parties to trace down assets of a debtor are limited in Switzerland. Professional investigation firms are sometimes hired, but they do not have special powers to get access to information.

Nevertheless, a debtor involved in a debt enforcement proceeding is obliged, by penalty, to disclose all assets, including those which are not in his custody, to the debt execution authorities. He or she must also disclose claims and entitlements against third parties. Third parties and governmental authorities are likewise bound to disclose assets of the debtor to the Debt Enforcement Office. Upon request, a debtor must give the debt execution officer access to his premises, repositories, and even safe deposit boxes. Officials may, if needed, request the assistance of the police.

After having traced down all assets, the Debt Enforcement Office opens the bankruptcy or seizes sufficient funds to cover the debts. It may secure the enforcement by safeguarding measures (e.g. taking custody of movable goods; registration of a reservation in the land register; notice to persons liable to the debtors that they may forthwith legally only pay to the Debt Enforcement Office).

III. Attachment procedures

Another effective tool in the hands of a creditor is attachment or freezing orders that may be obtained from Swiss District Courts if certain conditions are met:

- The debtor lacks a permanent domicile;
- The debtor, to avoid fulfilling his obligations, is hiding assets, is a fugitive or takes measures to become a fugitive;
- The debtor is travelling in Switzerland, or is a trader attending business fairs or markets;
- The debtor has *no domicile in Switzerland*, and the claim for which the attachment is sought either
    - has a sufficient nexus to Switzerland, or
    - is based on an enforceable court judgment or on an explicit acknowledgment of debt by the debtor;
- The creditor is in possession of a certificate of shortfall in bankruptcy or seizure proceedings;
- The creditor is in possession of a document allowing for the definitive setting aside of objections in debt enforcement proceedings (e.g. Swiss or foreign court judgments; court-approved settlements; certain public deeds and arbitration awards).

IV. Enforcement costs

The debt enforcement costs depend on the amount of the claim, the measures undertaken by the Debt Enforcement Office and the type of proceedings that are needed. Debt enforcement costs – without court costs - are relatively cheap, usually only a few hundred Swiss Francs. However, if court proceedings are necessary, costs and time requirements may be substantial. The debtor must compensate the prevailing creditor for these costs.

F. Enforcement of a Foreign Verdict in Switzerland

I. Is an acknowledgement proceeding before a Swiss court necessary?

Yes, an acknowledgement proceeding before a Swiss court is necessary before a foreign judgment is enforced. The proceeding is governed by the *Federal Act on Private International Law of 1987* ("*PILA*"), multilateral and bilateral treaties, especially the *Lugano Convention*, and domestic procedural rules (*Swiss Civil Procedure Code, Federal Debt Collection and Bankruptcy Act).*

II. Under what conditions may a verdict from an EU state be acknowledged in Switzerland?

In relation to signatory states of the *Lugano Convention*, *i.e.* all EU Member States, a judgment rendered in any competent court of such states must, upon request, be recognised by the competent Swiss court without a review of the substance. Only if very limited circumstances are alleged and proven, such as a flagrant violation of due process or of Swiss public policy, may enforcement be denied.

III. Under what conditions may a non-EU foreign verdict be acknowledged in Switzerland?

Generally speaking, Swiss courts have a favourable attitude towards acknowledgement of foreign judgements in general. Under the *PILA*, a foreign judgment shall be recognised if it was rendered by a competent court, if the decision is final, and if the recognition does not violate fundamental principles of Swiss law. The proof of reciprocity is no longer required, except in relation to the recognition of foreign bankruptcy decrees.

IV. Costs for acknowledgement proceeding

Since the acknowledgement proceeding is a court proceeding, see above under C.

G. Conflict of Laws: Do Swiss Courts Only Apply Swiss Law?

No. According the *Federal Act on International Private Law of 1987* ("*PILA*"), the applicable law is generally the one that has the closest relationship to the facts of the case. In many instances, the *PILA* designates which law has the closest relationship (i.e. the law of the seller in an international sales contract). Thus, Swiss courts regularly apply foreign law, except where the application of foreign law would produce a result that is incompatible with Swiss public policy. In addition, some mandatory provisions of Swiss law must be applied regardless of which law is designated by the PILA.

The content of foreign law shall be established by the judge *ex officio*, but he may require the parties to provide assistance.

H. Arbitration and Mediation in Switzerland

I. May foreign attorneys represent clients in arbitration or mediation proceedings in Switzerland?

Yes, and without restrictions. In fact, foreign lawyers often appear before arbitration tribunals and mediation panels in Switzerland.

II. Is Arbitration or Mediation binding in Switzerland?

Yes. Switzerland is a member state of the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958* ("*New York Convention*"). The enforcement of arbitration awards – including consent awards or awards on agreed terms - is a matter of routine in Switzerland and relatively fast.

The *Swiss Civil Procedure Code* and the *PILA* provide that a *settlement reached in the course of a state court proceeding or in arbitration* which is incorporated into a final decision or award has the same legal force as a reasoned court judgement or arbitration award. Judges and arbitrators are thus allowed, even encouraged, to conduct settlement discussions with the parties. In spite of this, no specific rules regarding the conduct of the conciliation or mediation process itself are written into the law. Judges and arbitrators have wide discretion as to the management of the settlement process.

By contrast, *settlements reached in private conciliation and mediation proceedings (outside of a state court or arbitration proceeding)* are treated as contractual settlements. They cannot be directly enforced like a court judgement or arbitration award. Nevertheless, the *Swiss Civil Procedure Code* provides that parties who have chosen private conciliation and mediation proceedings may jointly apply for a settlement reached in the mediation to be approved by a court. A settlement approved in such manner has the effect of an enforceable judgement.

III. Is Arbitration or Mediation frequent in Switzerland?

Yes. Switzerland is one of the major arbitration venues in the world. The history of arbitration dates back for more than 100 years. On average, one out of six ICC arbitration proceedings take place in Switzerland.

Due to Switzerland's long standing history of neutrality, arbitration proceedings have traditionally been and still are frequently used to resolve domestic and, in particular, international disputes. Swiss tribunals and courts are known to respect arbitration agreements to the greatest possible extent. Swiss courts, including the Swiss Federal Supreme Court, have a pronounced "hands-off" approach to arbitration proceedings. Very few arbitration awards are subject to appeal, and then only *very limited appeal is* available under the *PILA, directly*

and only to the Federal Supreme Court. Statistics show that of those cases being appealed to the Federal Supreme Court, less than 5% are finally successful.

IV. Arbitration and Mediation Rules used in Switzerland

In commercial arbitration, the *ICC Rules of Arbitration* (see www.iccwbo.org) and the *Swiss Rules of International Arbitration* of the Swiss Chambers of Commerce (www.swissarbitration.ch) are the most frequently used. Also many *ad-hoc arbitrations* are taking place in Switzerland.

Mediation is somewhat less frequent in Switzerland, but is often conducted in the context of Swiss arbitration proceedings. As stand-alone procedures, there are private institutions available such as the *Swiss Chambers' Court of Arbitration and Mediation* (www.sccam.org/sm/en/) or the *Swiss Chamber for Commercial Mediation* (www.skwm.ch), providing mediation services. In certain areas, such as banking, insurance and travel contracts, there are also designated ombudsmen and –women that offer mediation-type activities.

UNITED STATES

A. Court System

I. In general: One Nation, 55 Legal Systems

The United States of America is one nation comprised of 50 states, the District of Columbia (the federally administered territory around Washington D.C.) and 4 U.S. territories, the largest being Puerto Rico. A core principle of the American federalist system is that the states retain all powers not delegated by them to the federal government. So me areas of law are exclusively within federal jurisdiction, some remain state matters, and others can fall under either federal or state law. The result is that the U.S.A. is not one, but 55 distinct, yet sometimes parallel, legal systems.

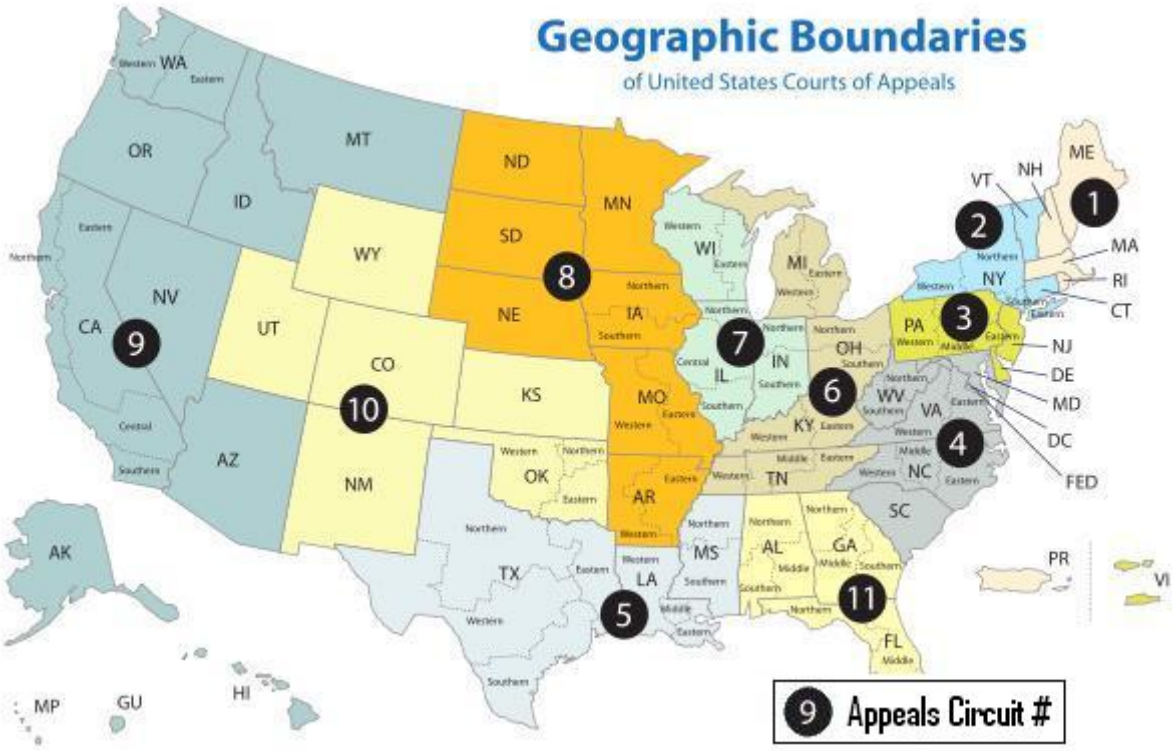
II.1 The Federal System:

The United States Supreme Court is the final appellate body for federal maters and may hear appeals from state Supreme Court decisions if it decides that sufficient federal constitutional or statutory issues are implicated.

12 Appellate Courts of General Jurisdiction: Circuit Courts of Appeal of general federal jurisdiction, organized on a geographic basis (see map below) plus a court of appeals for the federally administered District of Columbia (the area around Washington D.C). In addition to appeals from lower courts within its geographic jurisdiction, a circuit court also takes appeals of final decisions issued by administrative tribunals within federal regulatory agencies.

94 District Courts of General Jurisdiction: District courts have jurisdiction within a geographic area that may comprise a whole state, or part of a state.

94 Federal Bankruptcy Courts: Bankruptcy matters fall exclusively within federal jurisdiction. Each district court jurisdiction has a bankruptcy court, from which that district is generally the first point of appeal.



The geographical jurisdiction of the 11 General Jurisdiction Circuit Courts of Appeal. Source: United States Department of Justice.

II.2 Specialized courts available?

Yes. There are 5 specialized courts with national jurisdiction defined by subject matter. Brief subject matter explanations have been included for courts or administrative tribunals of potential significance to business litigants.

(a) Appellate

United States Court of Appeals for the Federal Circuit

The Federal Circuit is the only federal circuit that has a jurisdiction exclusively based upon subject matter. The court hears certain appeals from all of the United States District Courts (including those for U.S. territories) and appeals arising under certain statutes. It typically takes appeals from all specialized courts of original jurisdiction, as well as from certain administrative agencies:

- United States Court of International Trade (see original jurisdiction below)
- United States Court of Federal Claims (see original jurisdiction below)
- United States Court of Appeals for Veterans Claims
- United States Trademark Trial and Appeal Board (TTAB)
  Generally patent-related, TTAB hears appeals from decisions by USPTO Examiners denying registration of marks, and opposition proceedings filed against trademark applications. It also handles oppositions to registration, cancellation proceedings against registered marks, and concurrent use proceedings.
- United States Board of Patent Appeals and Interferences
  Handles patent examiner rejections and contested matters, contested patent applications and priority disputes.
- Board of Contract Appeals
  Handles disputes between contractors and federal agencies.
- United States Merit Systems Protection Board

(b) Original Jurisdiction

United States Tax Court

Tax Court is the only judicial forum in which federal income tax deficiencies can be disputed without first paying the disputed tax in full.

United States Court of International Trade

Jurisdiction over specific international trade and customs matters. Examples include customs broker licensing and agricultural subsidy disputes. It also has appellate jurisdiction over disputed antidumping and countervailing duties rulings by United States International Trade Commission and the Department of Commerce's International Trade Administration.

United States Court of Federal Claims

Hears monetary claims against the federal government asserted under constitutional, statutory, executive, regulatory and contractual rights.

United States Foreign Intelligence Surveillance Court

II.3 State Courts

State Supreme Courts are the court of last resort on matters of state law. However, the Supreme Court of the United States may take appeals from state and territorial supreme courts if (in its opinion) federal interests, including the U.S. Constitution, are implicated.

State court systems share a similar basic structure:

- State Supreme Court
- Court of Appeals (sometimes separate courts for civil and criminal matters, e.g. Alabama, Texas)
- Trial Courts
- Municipal Courts (typically small civil claims and minor misdemeanours).

In some states, such as New York, courts at the trial and particularly municipal level may be divided by subject matter types.

Comparable courts in different states may have different names. New York State, in which a "Supreme Court" is a trial or intermediate appellate court, while the Supreme Court is called the "Court of Appeals," often causes particular confusion.

Generally, specialized courts are rare. Several states have a court analogous to the United States Court of Federal Claims for adjudicating monetary claims against the state. Some states have lower courts or tribunals that handle tax disputes or Workers Compensation—an employer funded system designed to compensate for work related injuries. Many states now also have specialized business courts.

B. Do all U.S. Jurisdictions apply the same Law?

No. Federal law is distinct from state law, and each state has a unique body of law. Even within the theoretically homogenous federal system, case law can lead to potentially very significant divergence between Circuits in terms of interpretation of aspects of the law.

With one exception, U.S. jurisdictions operate a pure common law system. Louisiana has a mixed system, including a civil code. However, civil and commercial law are heavily shaped by common law principles and statutory law and are construed in a common law manner with prior case law accorded precedential value.

C. Costs of a Civil Lawsuit in The United States

I. Court Fees

Court costs are very limited, and are rarely a factor in litigation decision-making. Federal and state courts and administrative tribunals typically charge fees for performing specific actions, such as filing a motion, records searching, certified copies, etc., regardless of the nature of the action or amount at issue.

Attorney and evidentiary (particularly discovery) costs are typically the most significant sources of expense.

The above applies to court-ordered mediation processes, but not to private commercial arbitration proceedings, which can become very expensive.

I. Attorney Fees

Is there binding law for attorney fees?

No. These can be freely negotiated. Courts will apply precedential rules in circumstances where a court issues an order awarding attorney costs to a party.

Attorneys may undertake representation on a contingent (success) basis. Lawyers may agree to conduct all, or part, of a matter on a total success fee basis, or on a mix of payment upon success and reduced rates. Purely contingent retention requires some financial award to be at issue, and is more common in certain areas of practice, such as debt recovery or tort, than in others. In such circumstances, clients should expect a significantly increased remuneration for the lawyers on success, as a quid pro quo for assuming the risk. Ethical rules govern the percentage of any award (after costs) an attorney may legitimately recover.

II. Does the loser of the lawsuit have to compensate the winner for the court fees and (minimum) attorney fees?

Generally, no. The default rule is that each party is responsible for paying its own attorney's fees. However, there are many instances where statutory law creates specific, explicit exceptions. Courts also have the inherent authority to shift costs in in frivolous litigation circumstances. Additionally, parties can agree that a different rule will apply in the event of litigation.

D. Are Courts regularly fair to Foreign Parties?

Generally, U.S. courts are not unfair to non-US parties. However, decisions as to where an action may be brought or moved are critically important and impact the procedural, and potentially the substantive, law that will be applied to the dispute. Often referred to as the choice of law, venue and forum, these decisions should be reviewed with counsel at the onset of a potential dispute. Available choices of legal system, law and court are defined by the details of a particular dispute and the parties to it.

The United States Constitution recognized local bias as a potential problem in 1776. As a solution, it established federal Diversity Jurisdiction in cases where opposing parties are citizens of different states and the amount at issue is greater than (currently) $75,000. Where such an action would ordinarily be within the jurisdiction of a particular state, and one party is a citizen of that state, the action may be brought in, or removed to, a federal court. The federal court will adjudicate the case under state law. Diversity must be complete. Where one named defendant or plaintiff shares state citizenship with an opposing party, federal diversity jurisdiction is unavailable. Perhaps counter intuitively, diversity jurisdiction will not always be available to a non-U.S. entity. In certain circumstances non-U.S. parties can be deemed to be citizens of a particular state, or of all states. Diversity jurisdiction is not compulsory, and the decision whether to invoke it is a matter of legal strategy determined from the facts of a specific dispute.

The evidence-gathering approach applied by U.S. courts is unique in the breadth of disclosure of evidence, even in comparison to other common law nations. Many non-U.S. parties have been disadvantaged by a lack of advance understanding of this aspect of the obligations expected of any party to a U.S. judicial proceeding. Not only can these greatly affect costs and the final outcome, but they can cause conflict with domestic privilege and privacy regulations.

E. Enforcement of a Foreign-Country Judgment in the U.S.

I. Where certain property of the debtor is known

Generally, contract matters fall under state law. For contract disputes, federal jurisdiction requires diversity of citizenship and an amount in dispute of over $75,000, exclusive of interest or attorneys' fees. However, though federal jurisdiction is available, state contract law is likely to provide the basis for the decision, even in an

action started in a federal court. State jurisdiction may be advantageous on occasion. Any individual collection matter may be capable of being filed in multiple legal jurisdictions; and may possibly require action in more than one jurisdiction to achieve ultimate recovery.

As a result, choices of venue—essentially which court—and law (generally a choice between available state laws, although federal procedural law may factor) often have a considerable positive or negative impact on the likelihood of success and costs of any collection effort.

In the first instance a judgment must be obtained in a state that has an interest in the matter. This is not necessarily the state in which the debtor resides, or has assets. In such circumstances, the judgment must be "domesticated" in a state where assets reside. In theory, the doctrine of "full-faith and comity" requires this to be a routine court process. However, this is not always the case.

A further complication arises from the fact that US bankruptcy law, frequently resorted to by debtors attempting to evade their obligations, is a federal matter. Thus a case can involve a mixture of federal and state issues.

Direct seizure of property with the help of enforcement officials is possible at the discretion of the court, as is garnishment of individual or corporate accounts.

II. What kind of investigative power do the enforcement officials have?

In the common law tradition, the power of enforcement is vested in the courts, whereas investigation is typically conducted by the representatives of the party in contract matters. State and Federal rules require parties to a legal action to preserve and produce any information within their control that is relevant to the dispute. Courts have considerable powers to craft enforcement orders and to penalize failure to comply with such obligations, including financial penalties.

III. Enforcement Costs

In the U.S., the term "enforcement" is often applied to the process of domestication of a ruling obtained from a court in another state or a federal jurisdiction in a state where the financial or physical assets of the debtor are located. Generally courts will uphold such out-of-state judgments, but the process requires court proceedings and, potentially, hearings. Once an order is issued by a court in the state in which assets are located, the costs of official enforcement are minimal.

F. Enforcement of a Foreign-Country Verdict in the USA.

I. Is an acknowledgement proceeding before a U.S. court necessary?

Because the term "foreign" in U.S. jurisprudence refers to not being of a particular state, the term "foreign-country judgment" applies here. The procedure for recognition is similar to that for domesticating a judgment from another U.S. jurisdiction (see E III supra). The U.S. is not currently a signatory to any treaty requiring routine recognition of judgments by the courts of another country. Therefore, courts apply the doctrine of comity—a doctrine that holds that courts should defer to different countries that do not apply law or process that violates domestic law or public policy.

A judgment, decree or order from a foreign country must be final under the laws of the originating jurisdiction before a suit for recognition can be successful in a state or federal court. Essentially, courts will consider whether the originating jurisdiction had legitimate jurisdiction over the defendant—including whether jurisdiction contradicted contractual commitments between the parties, whether the defendant had adequate notice and opportunity to defend the action, whether the law of the foreign jurisdiction was applied fairly and is reasonable when considered against the principles of the domestic legal system, and whether the outcome does not contradict domestic notions of fairness and justice.

Ease of recognition depends on the nature of the original behavior, the jurisdiction that issued the judgment, the nature of the judgment, and the federal or state court adjudication the request. The best advice is to seek counsel of a U.S. attorney before attempting to secure recognition. Where U.S. enforcement is anticipated before commencing domestic proceedings, seeking input on enforcement may not only save time and cost, but assist in tailoring the relief sought to a form more likely to secure recognition in the U.S.

II. Enforcement of a Recognized Verdict

Once recognized, the judgment may be enforced as if entered in the jurisdiction of the recognizing court. If enforcement requires enforcement in another U.S. jurisdiction, domestication in that jurisdiction will be required.

G. Conflict of laws: Do U.S. courts only apply U.S. law?

No. Under certain conditions both state and federal courts in the U.S. apply the law of a foreign country or of commerce (or legal tradition, such as *lex mercatoria*).

H. Arbitration and Mediation in the U.S.

I. Can foreign country attorneys represent foreign clients in U.S. arbitration or mediation proceedings?

In commercial arbitration, generally yes if allowed under the agreed rules. In court-imposed arbitration, an attorney admitted in that jurisdiction (and therefore legally bound by applicable ethical rules) is normally required.

II. Is U.S. Arbitration or Mediation binding?

Most court, administrative or statutorily mandated mediation is non-binding, but arbitration generally is binding, subject to a limited ability to appeal. Parties may contractually agree for arbitration to be binding in the event of a dispute, and this will typically be upheld absent duress in negotiations or inequitable conduct of the proceedings.

III. Does Arbitration or Mediation often happen in the U.S.?

Yes. Courts will frequently encourage parties to engage in attempts to resolve disputes through mediation before a full trial is necessary. Commercial arbitration is also favored, partly because it can allow for potential resolution with limited evidentiary costs, can be a more rapid path to resolution and is typically confidential (U.S. court decisions are public records). Against this, there is the potential for significant fees and costs and the possibility of court proceedings if one party is dissatisfied with the outcome.

I. Power of an Attorney out-of-court

As in most common law systems, U.S. attorneys have no out-of-court powers by virtue of being an admitted attorney.