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Canada (Quebec)

North America

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1. UNIFORMITY OF LAW AND REGULATIONS

Quebec, as opposed to the other provinces of the Canadian federation, is a civil law jurisdiction. Matters of private law are regulated by the Quebec Civil Code. Broadly, the principles and rules regarding the recognition and enforcement of foreign judgments codified therein aim to promote the development of Quebec's international relationships, particularly in commercial matters, by facilitating the procedure for recognizing and enforcing foreign judgments.

2. JUDGMENTS

2.1. Definition

The Quebec Civil Code affords a broad scope to the concept of 'judgment', specifically applying the term 'foreign decision'. This term encompasses any decision of a tribunal, legally constituted by a foreign State, with regards to an action submitted to its jurisdiction, whether it be concerning a lawsuit, an incidental aspect thereof or a means of execution. The term also includes such legal acts as the naming of a tutor or curator, the probate of a will, as well as provisional and conservatory measures. All judgments rendered outside Quebec (except those rendered by Canadian courts applying Canadian federal laws) are considered foreign.

2-2 / North America

2.2. Categories

Except as otherwise provided, foreign judgments will be enforced or recognized in Quebec. The procedure to be followed is an application for recognition and enforcement made either by motion or incidentally in another proceeding. Money or patrimonial judgments require enforcement since they require a formal enforcement order. Personal status judgments need only be recognized and do not require enforcement. This distinction has however no consequences with respect to the procedural method to be used when enforcement or recognition has to be made by a local court.

- (a) Money judgments are enforceable.
- (b) Judgments ordering specific performance are enforceable.
- (c) Only permanent injunctions are enforceable.
- (d) Arbitration awards are recognized and executed if the matter in dispute is one that may be settled by arbitration in Quebec and if its recognition and execution are not contrary to public order. It is of note that the Code of Civil Procedure provides specific procedural dispositions governing the recognition and execution of foreign arbitration awards (unrelated to the provisions governing the *exequatur* procedure).
- (e) Personal status judgments do not have to be enforced by local courts. Although the procedure to be followed is the same, these judgments only have to be recognized. Whereas the difference between enforcement and recognition is not relevant before the Courts, it becomes important when the judgment has to be considered by a Quebec authority which is not a court of law. A foreign judgment in matters relating to personal status could thus be recognized by a local authority without following the formal procedure. The judgment would then benefit from an informal recognition within the local forum. A competent authority can, for example, marry two persons without having to entertain an application for recognition of a previous divorce judgment. This authority will nonetheless be required to verify that the divorce judgment does not fall within an exception to the general principle of recognition of foreign judgments.
- (f) A foreign certified adoption under the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption is not subject to *exequatur* proceedings.
- (g) An award for multiple/punitive damages should be enforced or recognized under the Quebec Civil Code unless the local courts consider such remedy to be a foreign public law provision or to be contrary to public order.
- (h) A judgment which is in itself a recognition of a previous judgment will, in principle, not be recognized and enforced.
- (i) Foreign interim orders are generally not enforceable as they are considered to be subject to potential review or reappraisal.

The principle, however, does not apply when interim orders are for the payment of support (maintenance). Such a decision can be enforced as

payments become due. It is also of note that maintenance order judgments rendered in foreign jurisdictions designated in the regulations of the *Act respecting reciprocal enforcement of maintenance orders* may be enforced in Quebec and do not require *exequatur* proceedings.

- (j) A foreign judgment against the province of Quebec or one of its state bodies will be enforced only when it has been validly rendered by a foreign court exercising jurisdiction as defined by Quebec law. A foreign judgment against the province of Quebec concerning a non-commercial or public matter will not be enforced.
- (k) Judgments enforcing obligations arising from laws of taxation will neither be enforced nor be recognized by local courts unless reciprocity is granted by the foreign courts. This prohibition can be extended to all foreign judgments applying foreign public laws.

2.3. Reciprocity

Reciprocity is not essential for enforcement by the local courts.

3. CURRENCY REGULATIONS AND RESTRICTIONS

(a, b) There are no restrictions per se on the transfer of funds received by virtue of an enforced or recognized foreign judgment. It is possible, however, that depending on the circumstances and the nature of the suit, Canadian and Quebec fiscal authorities might require the payment of custom duties on amounts awarded.

(c) Awards granting payments in foreign currency will have to be converted into Canadian currency at the exchange rate prevailing on the day the judgment is recognized or enforced, or at any other rate determined by the court.

4. DOCUMENTARY REQUIREMENTS

(a) The original or a certified copy of the foreign judgment must be provided. Except where a party wishes to request the enforcement of a default judgment, (in which case, proof of service must also be provided), there are no additional documentary requirements per se. If, though, the person making the motion for recognition and enforcement of the foreign judgment is required to identify himself or herself as duly mandated, the following rules apply.

The relationship between a company and a person authorized to represent it in a judicial proceeding is either regulated by company law when the person representing the company is one of its directors or by the law of agency when that person is an outsider.

In the first case, the governing law is the one under which the company was constituted. Under Quebec law, directors do not need special authorization to act in the name of the company.

5-6 / North America

In the second case, the relation between the company as principal and the agent will be governed by the law of the country where the agent resides or by the law expressly chosen to apply to the agency contract. Under Quebec law, directors can generally conclude any contracts which they may lawfully enter into. A special authorization could only be imposed in the company's by-laws.

(b) The party demanding recognition or enforcement of the foreign judgment must provide a certificate from the competent foreign official to prove that the judgment can no longer be appealed or reviewed and, that it is final and enforceable.

(c) Faxed or notarized copies of a document are considered reproductions. Proof of a document, a reproduction of which is in the possession of a legal person (a company) and which has been reproduced in order to keep permanent proof thereof, may be made by filing a copy of the reproduction or an extract that is sufficient to identify it, together with a declaration attesting that the reproduction complies with the rules in force. A certified true copy or extract of the declaration may be received into evidence with the same force as the original.

The reproduction must be accurate. The person designated to witness the reproduction shall, within a reasonable time, attest to the fact that this operation has been carried out by a declaration under oath indicating the nature of the document and to certify the accuracy of the reproduction.

5. CONVENTIONS

Canada ratified the Conventions on Child Abduction and Trusts.

With respect to the Hague Convention on Service Abroad, although the Convention was ratified by both Canada and Quebec, neither jurisdiction appears to have formally integrated the provisions thereof in their legislation by way of adoption of a specific statute. However, the provisions of the Hague Convention on Service Abroad may be followed and both the Canadian and Quebec jurisdictions have established a mechanism to facilitate the use of the Convention.

6. AUTHENTICATION OF DOCUMENTS

A foreign judgment is considered a semi-authentic act and will, if issued by a competent foreign officer, be proof of its content as against all persons. Neither the quality nor the signature of the officer need be proved. A copy of a document in the custody of a foreign public officer is proof of its conformity to the original against all persons, and replaces the original if it purports to be issued by the officer. If this judgment is contested as to its validity, the person invoking it has the burden of proving that it is authentic. A copy of the judgment can be authenticated by the foreign court.

A power of attorney clause in a private writing made outside Quebec is proof against all persons if it is certified by a competent public officer who has verified

the identity and signature of the mandator. Any act, copy thereof or power of attorney may be deposited with a notary who may then issue copies of same. Said copy is proof of its conformity to the deposited document and replaces it. Where an act or copy issued by a foreign public officer or a power of attorney certified by a foreign public officer has been contested, the person invoking it has the burden of proving its authenticity.

No consular authentication is required.

7. TRANSLATION OF DOCUMENTS

- (a) Documents in English or French do not have to be translated.
- (b) Documents in other languages must be accompanied by a certified translation. This translation must be authenticated in Quebec. There is no legal provision as to the procedure whereby a translation becomes authenticated. Usually, the translation will be verified by a professional translator who will swear to its conformity before a commissioner of oaths who in turn affixes his or her seal on the translation.

8. REOPENING OR REVIEW OF JUDGMENTS

(a, b) Reopening or review of judgments is strictly forbidden. However, adoption judgments will be examined to ensure they are in accordance with local rules on consent and eligibility. Similar powers of examination are also afforded to Quebec courts in certain circumstances with respect to judgments regarding support payments and custody.

(c) An allegation of fraud can be raised only if it refers to cases where the person benefiting from the judgment has changed the location of a connecting factor used by Quebec's conflict of law rules in order to evade a prohibition resulting from the law which normally applies. For example, the Quebec conflict of law rules with respect to property rights designate the law of the place where the property at issue is situated.

If the petitioner transferred moveable property from Quebec to the country where the judgment was rendered for the sole purpose of evading a prohibition contained in the Quebec rules of publication, the judgment will be deemed to have been fraudulently obtained.

9. PENDING PROCEEDINGS

- (a) On the application of a party, a Quebec authority may stay its ruling with respect to an action brought before it if another action between the same parties, based on the same facts and having the same object is pending before a foreign authority, provided that the latter action may result in a decision which may be recognized in Quebec. In all cases where the foreign authority was seized of a case last, recognition and enforcement

10–11 / North America

will not be granted even though its judgment is rendered before the local court renders its own. When the foreign court was seized of a case first, its judgment will be recognized or enforced only if it preceded the local court's decision.

- (b) A pending appeal would render the foreign judgment unenforceable since it would not be final in this case.

10. DEFENCES

Since a foreign judgment can no longer be reopened and reviewed, the respondent will not have 'defences' based on the merits. The local courts will automatically verify if the foreign judgment meets the requirements set forth in the Quebec Civil Code. When the respondent opposes the motion for recognition and enforcement, he or she can argue that a specific condition has not been met. These arguments, however, are not defences as such since the court will automatically verify the requirements for recognition and enforcement of a judgment. The local court will recognize or declare enforceable any decision rendered outside Quebec except in the following cases:

- the authority of the country where the decision was rendered had no jurisdiction under the rules of private international law as applied by Quebec courts;
- the decision is either subject to an appeal or some other remedy at law within the foreign system or it is not final or enforceable at the place where it was rendered;
- the decision was rendered in contravention of the fundamental principles of procedure (the court will consider the adequacy of notification of the action and all types of fraud perpetrated in the foreign proceeding). See also 11(e) hereunder;
- a dispute between the same parties, based on the same facts and having the same object, has given rise to a decision rendered in Quebec, whether it has acquired the authority of a final judgment (*res judicata*) or not, or is pending before a Quebec authority in first instance or has been decided in another foreign country and the decision meets the necessary conditions for recognition in Quebec;
- the outcome of a foreign decision is manifestly inconsistent with public order as understood in international relations;
- the decision enforces obligations arising from the laws of taxation of a foreign country (unless reciprocity has been granted by the foreign courts).

11. JURISDICTION

- (a) The local court will only accept the foreign court's jurisdiction if it meets certain requirements set forth in the Quebec Civil Code as described in paragraph(c).
- (b) Jurisdiction is established under Quebec law.

- (c) The jurisdiction of foreign courts is established in accordance with the rules on jurisdiction applicable to Quebec courts. All conditions of jurisdiction having to be met by Quebec courts must also be met by foreign courts whose judgments are to be recognized or enforced unless otherwise provided. These conditions vary according to the type of action which originated the judgment. Quebec law recognizes personal actions, in rem or *quasi* in rem, as well as mixed actions. Personal actions are divided into two categories: personal actions of a patrimonial nature and personal actions of an extra-patrimonial and family nature. Actions of an extra-patrimonial nature overwhelmingly concern personal status. Actions of a patrimonial nature mostly concern money judgments and specific performance.

Conditions for valid jurisdiction can be summarized as follows. We will examine them by dividing the topic into six points:

- (1) A foreign court has jurisdiction to hear personal actions of an extra-patrimonial and family nature when one of the persons concerned is domiciled in Quebec. Foreign courts have jurisdiction to rule on the custody of a child provided he or she is domiciled in the forum and on separation from bed and board when one of the spouses has his or her domicile or residence in the forum at the time of the institution of the proceedings. Foreign courts also have jurisdiction in maintenance matters when one of the parties has his or her domicile or residence in the forum and in matters concerning nullity of marriage when one of the spouses has his or her domicile or residence in the forum or when the marriage was solemnized there. Foreign courts also have jurisdiction with respect to matters relating to marriage, particularly effects which are binding on all spouses, regardless of their matrimonial regime, when one of the spouses has his or her domicile or residence in the forum. 'Effects' refers to the legal status imposed on married people regardless of their matrimonial regime. This includes the rights and duties of spouses, the status of the family residence, the status of properties in the family patrimony whose distribution after a divorce is of public order and the compensatory allowance which some spouses may claim after a divorce as compensation for his or her contribution to the enrichment of the former spouse.

Jurisdiction of foreign courts will also be recognized in matters of filiation where the child or either of his or her parents is domiciled in the forum or is a national thereof and in actions relating to divorce if one spouse had his or her domicile in the country where the decision was rendered or had his or her residence in that country for at least one year before the institution of the proceedings, or if the spouses are nationals of that country or if the decision would be recognized in that country.

- (2) A foreign court has jurisdiction to hear personal actions of a patrimonial nature only if one of the following conditions is met:

11-11 / North America

- the defendant was domiciled in the country where the decision was rendered;
 - the defendant owned an establishment in the country where the decision was rendered and the dispute related to its activities in that country;
 - a prejudice was suffered in the country where the decision was rendered and it resulted from a fault which was committed in that country or from an injurious act which took place in that country;
 - the obligations arising from a contract were to be performed in that country;
 - the parties have submitted to the foreign authority disputes which have arisen or which may arise between them in respect of a specific legal relationship; however, renunciation by a consumer or a waiver of the jurisdiction of the authority of his or her place of domicile may not be set up against him or her;
 - the defendant has recognized the jurisdiction of the foreign authority.
- (3) A foreign court has jurisdiction with respect to a real action (action in rem) if the property in dispute is situated in that country. In matters relating to successions, if the succession opens in the foreign country, the foreign court has jurisdiction where the defendant or one of the defendants is domiciled in the country or the deceased had decided that the law of that country should govern his or her succession as well as any property of the deceased situated in that country and a ruling is required as to the devolution or transmission of the property.
- A foreign authority has jurisdiction in matters relating to matrimonial regimes in the following cases: (1) the regime is dissolved by the death of one of the spouses and the foreign court has jurisdiction with respect to the succession of that spouse; (2) the object of the proceedings relates only to property situated in that country. In other cases, a foreign court only has jurisdiction if one of the spouses has his or her domicile or residence in that country on the date of institution of the proceedings.
- (4) In addition to the above-mentioned conditions with respect to domicile, residence, citizenship, property ownership and consent, all disputes settled by the foreign judgment must be substantially connected with the country whose court was seized of the case.
- (5) The jurisdiction of the foreign court will not be recognized in the following cases: (1) where by reason of the subject matter or an agreement between the parties, Quebec law grants exclusive jurisdiction to the authorities to hear the action which gave rise to the foreign decision (this will be the case in all decisions to be rendered in matters relating to civil liability, when damages were suffered in or outside Quebec as a result of exposure to, or use of, processed or unprocessed raw materials which originate in Quebec); (2) where by reason of the subject matter or an agreement between the parties, Quebec law recognizes the exclusive jurisdiction of another foreign

country; or (3) when Quebec law recognizes an agreement by which exclusive jurisdiction has been conferred upon an arbitrator.

- (6) Since Quebec law recognizes the doctrine of forum non conveniens, it can refuse to recognize a foreign court's jurisdiction on the basis of forum non conveniens even though jurisdiction is regularly established. This very same reasoning applies in the case of a pending proceeding instituted in another forum.

We must point out that recognition or enforcement may not be refused on the sole ground that the foreign court applied a law different from the one that would be applicable under the Quebec conflict of law rules.

- (d) Entering an appearance in order to defend oneself in a foreign court may be considered as a recognition of that court's authority.

If the defendant appeared only to contest the jurisdiction and never, at a later date, implicitly or explicitly submitted himself or herself to the jurisdiction, the foreign court's jurisdiction could be challenged on the ground that there was a contravention of the fundamental principles of procedure. This would undoubtedly be the case if the foreign court did not allow the defendant to appropriately challenge the jurisdiction.

- (e) (i) A default judgment is treated differently since Quebec law attaches to its enforceability a condition pertaining to the fundamental principles of procedure. The party applying for recognition and enforcement of the foreign judgment rendered by default must prove that the action was validly served. Service must be valid according to the law of the country where the judgment was rendered even when the person served is domiciled in Quebec. The defaulting defendant can nonetheless prove that the method of service was insufficient for him or her to gain knowledge of the action or that the delay to prepare his or her defence was too short.
- (ii) The default judgment would be defined as a judgment granted after default to appear or to plead and after there has been a failure to appear at the hearing.
- (f) A grant of exclusive jurisdiction to the foreign court will not be subject to review by the local court unless such exclusive jurisdiction was expressly granted to the Quebec courts by Quebec law.
- (g) The respondent does not have to be a citizen, resident or own assets or carry on business in the local country.

12. CONTRACTUAL WAIVER

The validity of a contractual waiver is to be determined exclusively by the foreign court according to its own law as to whether it relates to service and notice or to the normal documentary or procedural requirements.

Quebec law recognizes that procedural matters are governed by the law of the court which is seized with the dispute. Unless the waiver is considered to be contrary to the fundamental principles of procedure, it will be held valid.

13–16 / North America

13. SERVICE REQUIREMENTS

The Quebec Civil Code contains no specific provisions concerning the method of service of an action but it does ask local courts to evaluate whether the method actually used is in conformity with the essential principles of procedure.

According to certain decisions, it can generally be said that personal service in the country where the decision is rendered is a fundamental principle of procedure and all other methods are invalid. However, in its provisions governing default judgments, the Quebec Civil Code seems to ease the requirement of personal service and instead envisages a method of service sufficient to guarantee that the defendant will learn of the lawsuit which has been instituted.

The onus of proof with respect to service falls on the party requesting the enforcement of the judgment. Since this requires evidence that the proceedings were served in conformity with the law of the jurisdiction in which the judgment was rendered, this first entails establishing the foreign law in evidence. It is of note that even where a party has submitted satisfactory evidence of service, the opposing party may bar the motion if it can establish that it was unable to take cognizance of the introductory proceedings or that it was not afforded a sufficient delay to present its defence.

14. ASSIGNMENT

A judgment as such cannot be assigned since only the rights recognized or constituted by that judgment can be transferred or assigned. To the extent that the assignee has no more rights than the assignor such an assignment cannot confer any advantages in the proceedings before the local court.

15. INTERIM RELIEF

- (a) The beneficiary of a foreign judgment who makes an application for recognition or enforcement will not be treated differently from any other party to a local proceeding. If he or she shows that there is reason to fear that without interim relief the recovery of his or her debt may be put in jeopardy, a seizure before judgment will be granted.
- (b) Quebec courts will generally order a foreign plaintiff to provide security for costs if the defendant requests such security by way of motion. The amount will vary according to the amount at issue in the lawsuit.

16. INTEREST

- (i) The determination of the interest payable pursuant to a foreign decision is governed by the law of the court that rendered the decision. The law of the foreign court will determine if interest is due, the date at which interest will accrue and the applicable rate. Foreign law controls the

determination of the amount due in foreign currency until such amount is converted into Canadian currency.

- (ii) The conversion will be based on the exchange rate on the day the foreign judgment is recognized or enforced. From that date on, any additional interest will be payable in accordance with Canadian and Quebec law which is approximately 5% p.a.

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

- (a)
 - (i) If the motion for recognition and enforcement is unopposed, the time period from the date of the filing until the decision is rendered is approximately two months.
 - (ii) If the motion is opposed, a longer delay can be expected before recognition or enforcement is granted.
- (b) Foreign judgments will be enforced by a local court like any other decision.
 - (i) The primary means of enforcement is the seizure of both moveable and immoveable property.
 - (ii) Civil imprisonment is not recognized in Quebec with respect to civil and commercial matters.
 - (iii) Bankruptcy and liquidation can be requested in a motion by the beneficiary of the foreign judgment.
 - (iv) Restrain on leaving the country is not recognized with respect to civil and commercial matters.

18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS

- (a) According to the regulation presently in force, costs vary according to the interest at stake and the acts that will precede or follow the filing of the motion for recognition and enforcement. If the interest at stake cannot be evaluated, the costs will vary according to the number of acts preceding or following the filing of the motion. All judicial costs will be awarded to the winning party, which do not include attorney's fees. These costs, however, are nominal.

It is of note that on 29 September 2011, the Ministry of Justice presented a Bill proposing a major reform of the rules of Quebec civil procedure. If the newly proposed regime enters into force, the rules governing judicial costs will be abolished entirely, and each party will be responsible for its own share of the costs.

- (b) Attorneys' fees are strictly calculated on an attorney–client basis. Fees are charged either on an hourly basis or according to the amount at issue depending on the agreement entered into between the attorney and his or her client.
- (c) An attorney is permitted to enter into a contingency fee agreement.
- (d) A plaintiff who does not reside in Quebec must generally provide security for the costs which may be incurred in consequence of his or her suit.

19–21 / North America

19. BANKRUPTCY/LIQUIDATION

- (a) In the event of bankruptcy, the foreign creditor will be treated like any local creditor.
- (b) Jurisdiction concerning questions relating to bankruptcy is generally a federal matter. However, questions relating to the validity of debts or the transfer of properties are subject to the conflict of laws rules of each province. A Canadian court has jurisdiction as soon as assets in a foreign bankruptcy proceeding are located in Canada.

The principles with respect to the recognition and enforcement of a bankruptcy judgment are quite confusing. There is no clear and established distinction between de plano recognition of a foreign bankruptcy judgment and the enforcement by way of a motion for recognition and enforcement when enforcement measures are needed. The courts have recognized the existence of a bankruptcy which was ordered in a foreign country and they have also granted receivership orders after having first recognized the existence of the foreign bankruptcy. However, seizures can be granted to a foreign trustee in bankruptcy and any other foreign creditors without the foreign bankruptcy proceedings being acknowledged or taken into consideration.

20. LAWYERS (WHO CAN APPEAR?)

Any member of the Quebec Bar can represent any person before any court in the province of Quebec.

21. INTERNATIONAL TREATIES

Quebec and France are bound by an agreement containing specific provisions for recognition and enforcement of judgments relating to the status and capacity of persons and more particularly, the custody of children and maintenance obligations. These provisions are applicable regardless of any general law. The provisions in the Quebec Civil Code with respect to these issues are more liberal than those in the above-mentioned agreement. For a French decision on status and capacity of person, custody of children and maintenance obligation to be recognized, the following conditions must be met:

- the decision must be rendered by a competent jurisdiction according to the rules regarding jurisdiction in force in the country where that decision is to be recognized;
- the decision must have applied the laws applicable to the dispute under the conflict of law rules in force in the country where the decision is to be recognized;
- the decision must be final;

- the parties must have been summoned, represented or be declared in default;
- the decision must not be contrary to public order as it is understood by the country where the decision is to be recognized;
- a dispute between the same parties, based on the same facts and having the same object must not be pending before a jurisdiction of the petitioned authority and must not have given rise to a decision rendered by a jurisdiction of the petitioned authority.

Furthermore, it is of note that Canada and France entered into an agreement with respect to the recognition and enforcement of judgments in civil and commercial matters that entered into force in 2006.

22. CROSS-EXAMINATION OF AFFIDAVIT'S DEPONENT

- (a) Supporting affidavit is not required. However, the defendant may examine the plaintiff.
- (b) There are no grounds for opposing such examination.
- (c) The defendant is required to pay the travelling expenses of the plaintiff.

23. REQUIRED AFFIDAVIT

An affidavit is not required.

24. NEW ACTION INSTEAD OF ENFORCEMENT

- (a) A new action can be instituted instead of an application for recognition and enforcement of a foreign judgment. The beneficiary of such foreign judgment can institute new proceedings since the judgment has no effect whatsoever in the forum if it has not been previously recognized or enforced.
- (b) Statutory limitation is governed by the law applicable to the merits of the dispute. It will thus be determined as soon as the Quebec conflict of law rules have specified which law will be applied to the resolution of the dispute.

25. STATUTORY LIMITATION

Statutory limitation under the Quebec Civil Code (prescription) for the institution of proceedings in recognition and enforcement of foreign judgments appears to be ten years from the date when the foreign judgment is rendered. In fact, authors suggest that the prescription period is the same as the one relating to the execution of judgments rendered by the Quebec courts, which pursuant to section 2924 of the Quebec Civil Code is ten years. However, one should

26-26 / North America

remember that some suggest that the law to be used to determine the prescription period should be the one applicable in the foreign jurisdiction or the law actually applied by the foreign jurisdiction.

26. STATES/CANTONS

Not applicable.