

SECOND COMMISSION

The principles for determining when the use of the doctrine of forum non conveniens
and anti-suit injunctions is appropriate

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RESOLUTION

Whereas

- a. Transnational litigation has greatly increased in recent years.
- b. National court systems have developed differing solutions to deal with questions of transnational jurisdiction and litispence, including the practice of declining to assume or exercise jurisdiction on the ground that a court in another country is more appropriate to deal with the issues (forum non conveniens) and the practice of granting injunctions to restrain parties from commencing or continuing proceedings in another country (anti-suit injunctions).
- c. Issues of transnational jurisdiction and litispence have increasingly become the subject of international conventions and regional instruments.
- d. Parallel litigation in more than one country between the same, or related, parties in relation to the same, or related, issues may lead to injustice, delay, increased expense, and inconsistent decisions.

- e. It is universally recognized that (subject to special rules based on the policy of the protection of the interests of the weaker party) effect should be given to choice of court agreements in international transactions.

- f. Anti-suit injunctions may result in interference in foreign proceedings in breach of comity.

- g. Nothing in the following principles is intended to prevent the grant of bona fide provisional or protective measures by a court having a reasonable connection with the parties or the measures to be taken.

The Institute recognizes, in the interests of justice, the applicability of the following principles, which relate to proceedings in civil and commercial matters (excluding family law) and are subject to any applicable international conventions or other provisions of law.

1. When the jurisdiction of the court seised is not founded upon an exclusive choice of court agreement, and where its law enables the court to do so, a court may refuse to assume or exercise jurisdiction in relation to the substance of the claim on the ground that the courts of another country, which have jurisdiction under their law, are clearly more appropriate to determine the issues in question.

2. In deciding whether the courts of another country are clearly more appropriate, the court seised may take into account (in particular): (a) the adequacy of the alternative forum; (b) the residence of the parties; (c) the location of the evidence (witnesses and documents) and the procedures for obtaining such evidence; (d) the law applicable to the issues; (e) the effect of applicable limitation or prescription periods; (f) the effectiveness and enforceability of any resulting judgment.

3. Parallel litigation in more than one country between the same, or related, parties, in relation to the same, or related, issues, should be discouraged.

4. In principle, the court first seised should determine the issues (including the issue whether it has jurisdiction) except (a) when the parties have conferred exclusive jurisdiction on the courts of another country, or (b) when the first seised court is seised in proceedings which are designed (e.g. by an action for a negative declaration) to frustrate proceedings in a second forum which is clearly more appropriate.

5. Courts which grant anti-suit injunctions should be sensitive to the demands of comity, and in particular should refrain from granting such injunctions in cases other than (a) a breach of a choice of court agreement or arbitration agreement; (b) unreasonable or oppressive conduct by a plaintiff in a foreign jurisdiction; or (c) the protection of their own jurisdiction in such matters as the administration of estates and insolvency.
