

Resolution 4/2002

INTERNATIONAL CIVIL AND COMMERCIAL LITIGATION

PARIS / NEW DELHI PRINCIPLES ON JURISDICTION OVER CORPORATIONS

The 70th Conference of the International Law Association held in New Delhi, India, 2-6 April 2002:

RECOGNISING that corporations created under national law in many and various forms frequently conduct their operations across national borders, thereby playing a vital role in international commerce that is increasingly conducted on a global scale;

CONSIDERING that the decisions and activities of such corporations will have an impact in many states giving rise to disputes and claims for compensation, particularly in contract, delict or restitution, across national borders;

NOTING that national laws differ in defining the place where a corporation may be subject to general jurisdiction at its principal residence or establishment, or where it may attract specific jurisdiction in other states through the activities of its branches, subsidiaries or by reason of its other activities;

MINDFUL both of the generally accepted primary principle that the legal personality of the corporation is separate from that of its individual and corporate shareholders and of the fact that many corporations form part of a group of corporations pursuing a common economic objective and sharing a common command structure;

DESIRING to provide an internationally acceptable framework for the allocation of jurisdiction over corporations in relation to issues that are specific to corporations;

HEREBY ADOPTS the following Principles:

SCOPE

1.1 These Principles are concerned with the particular rules of jurisdiction that are distinctive to corporations. The word 'corporations' includes entities (not being natural persons) that have the capacity to sue and be sued in their own names and state-owned corporations.

GENERAL JURISDICTION

2.1 A corporation may be sued in the courts of the state where:

- a) it has its statutory seat or is incorporated, or under whose law it was formed;
- b) it has its central administration; or
- c) its business, or other professional activity is principally carried on.

SPECIFIC JURISDICTION

- 3.1. A corporation may also be sued in the courts of a state where it has a branch, agency or other establishment in respect of a dispute arising out of its operations in that state.
- 3.2. Where a corporation operates in a state through a subsidiary or other related corporation in circumstances where that second corporation has no independent existence in fact, since the first corporation takes all material decisions as to the conduct of the business of the second corporation, the second corporation shall be treated as a branch of the first corporation for the purposes of the preceding rule.
- 3.3 A corporation may also be sued in the courts of a state in respect of a claim arising directly out of an activity carried on by that corporation in that state.
- 3.4 These Principles do not relate to the possible establishment of jurisdiction by the operation of other rules of specific jurisdiction applicable to persons generally.

GROUPS OF CORPORATIONS

- 4.1 Where a corporation that is a member of a group of corporations is properly sued in the courts of a state, the parent or other corporate member of the same group may also be joined to the proceedings for a closely connected claim.

EVIDENCE AND PROCEDURE

- 5.1 A plaintiff must establish a good arguable case that the court has jurisdiction over the defendant corporation in accordance with these Principles.
- 5.2 Where jurisdiction is contested, the court shall make a prompt determination as to its jurisdiction at the outset of the proceedings before it and in any event before the defendant is required to plead on the merits.
- 5.3 The court shall normally make its decision on the written evidence as to jurisdiction filed by the parties.

AND THE INTERNATIONAL LAW ASSOCIATION FURTHER NOTES that by delivering its Fourth and Final Report the Committee on International Civil and Commercial Litigation has completed its work;

AND THANKS the Chairman, the Rapporteur, the Assistant Rapporteur and the other Members of the Committee for its outstanding achievements since 1992, in particular: the publication of *Transnational Tort Litigation*, Clarendon Press, Oxford, 1996, the *Principles on Provisional and Protective Measures in International Litigation* adopted at the 67th Conference in Helsinki, 1996, the *Leuven-London Principles on Declining and Referring Jurisdiction in International Litigation*, adopted at the 69th Conference in London, 2000, and the above-mentioned *Paris-New Delhi Principles on Jurisdiction over Corporations*.