

Reciprocal Recognition & Enforcement of Judgments

Yolande J. Whitely
Attorney-at-Law



Commonwealth Law Conference
Tuesday, April 8, 2025

CONTEXT

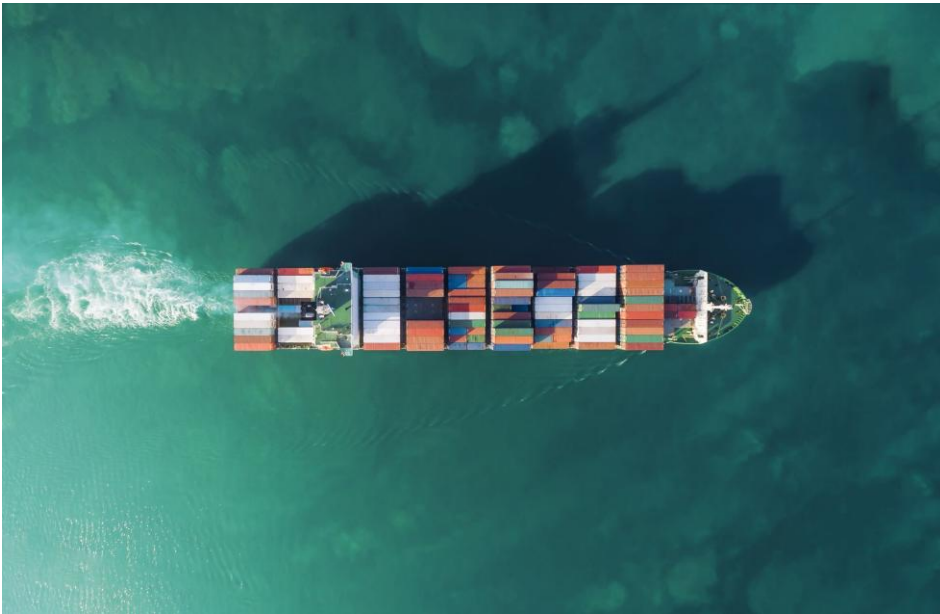


- Caribbean
- Jamaica
- Specific Organisation of Eastern Caribbean States (OECS) countries
 - **Anguilla**
 - **Antigua and Barbuda**
 - **Montserrat**
 - **St Kitts and Nevis**
- Belize



What are the key principles governing the recognition and enforcement of foreign judgments in Commonwealth jurisdictions?

THE NEED FOR RECIPROCAL RECOGNITION AND ENFORCEMENT



- Global Economy
- Increased cross-border transactions
- Encourage commerce
- Judgments in one jurisdiction to be enforced in others
- Commonwealth family of nations

KEY TERMS

“**STATE OF ORIGIN**” means the state ... where a foreign judgment was made.
 (“Original Court”)

“**ENFORCING STATE**” means the state in which the judgment is to be recognized
 (“Registering Court”)

“**JUDGMENT CREDITOR**” means the person in whose favour the foreign judgment was made.

“ **JUDGMENT DEBTOR**” means the person who is liable under the foreign judgment.



Recognition and/or Enforcement

THE
SHIELD
OR THE
SWORD

*Varies from
Jurisdiction
to
Jurisdiction*



**PRINCIPLES GOVERNING
RECOGNITION AND ENFORCEMENT**

PRINCIPLES GOVERNING RECOGNITION AND ENFORCEMENT



**Territorial
Sovereignty**

PRINCIPLES GOVERNING RECOGNITION AND ENFORCEMENT

International/Bilateral/Regional Agreements

Hague

- Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters
- 15 of 56 commonwealth – party to Hague

UNITED KINGDOM

- Administration of Justice Act 1920
- The Foreign Judgments (Reciprocal Enforcement) Act 1933

Local Legislation –Some Reciprocal Acts

➤ Jamaica

- *Judgment and Awards (Reciprocal Enforcement) Act 1923*
- *Judgments (Foreign) (Reciprocal Enforcement) Act 1936*

➤ Antigua and Barbuda – *The Reciprocal Enforcement of Judgments Act*

➤ Belize – *Reciprocal Enforcement of Judgments Act Chapter 171*

➤ Barbados, Guyana, Trinidad and Tobago etc.

Common Law

PRINCIPLES GOVERNING RECOGNITION AND ENFORCEMENT

- Jurisdictional Competence
- Final and Conclusive
- Fixed sum (not being tax or penalty)
- Fraud
- Public Policy Considerations
- Breach of Natural Justice

Sylvester Dennis v Lana Dennis [2016] JMCA Civ 56

PRINCIPLES GOVERNING RECOGNITION AND ENFORCEMENT

“Judgment”

Foreign personal judgments

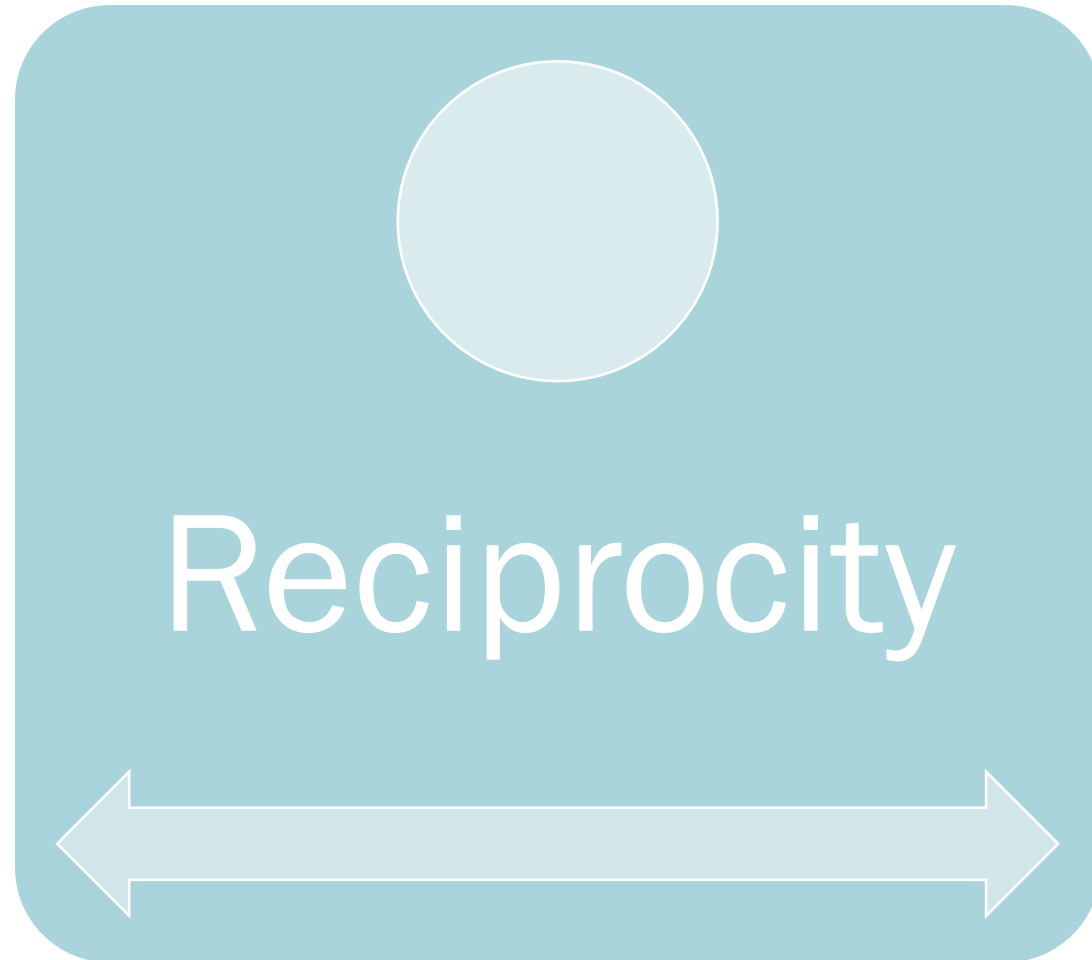
In personam

Civil proceedings

Criminal proceedings

Payment of money as compensation or damages to injured party

PRINCIPLES GOVERNING RECOGNITION AND ENFORCEMENT



“...if satisfied that
...substantial reciprocity of
treatment will be assured
...”

Statutory – decision of the
Head of State

PRINCIPLES GOVERNING RECOGNITION AND ENFORCEMENT

Limitation Period

- **Antigua and Barbuda and Belize** – 12 months after the date of judgment or as the court decides
- **Jamaica** – 12 months/6 years from judgment or appeal end





**How do the principles compare to
national court judgments?**

National Court Judgments



Subject to order of the Court

Effective once ordered

Right to “enforce/execute” arises once ordered and must be aided by the court in execution

Mechanisms as provided by statute – Nature of Judgment and assets available

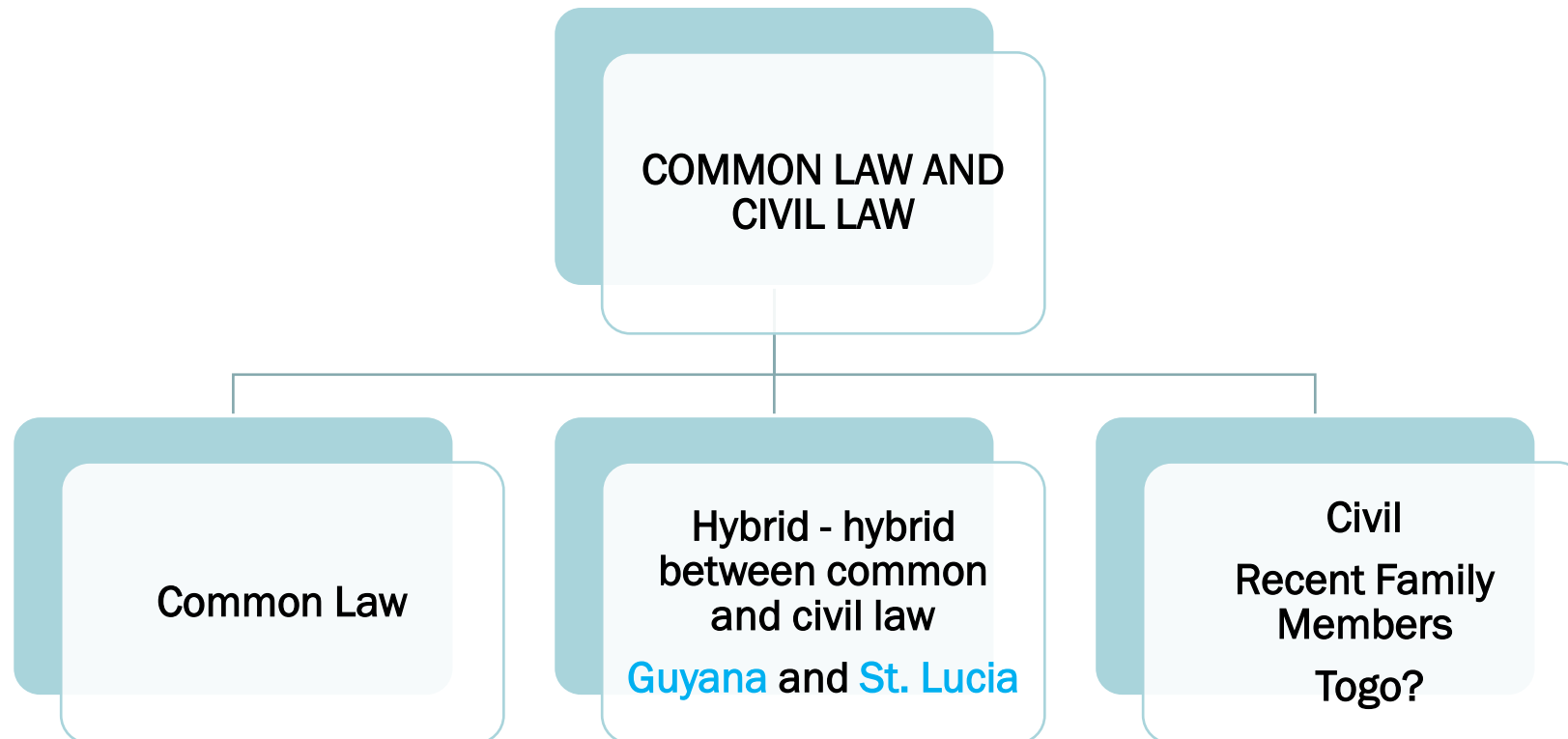
Procedure provided by civil procedure rules

Permission to enforce needed in certain stated circumstances .e.g. judgment over 6 years old



**How do enforcement challenges
differ between common law and
civil law jurisdictions in the
Commonwealth?**

COMMONWEALTH CLASSIFICATIONS - NATIONS



COMMON LAW VS CIVIL LAW

	Legal basis for enforcement	Jurisdictional Competence
COMMON LAW	<ul style="list-style-type: none">➤ Heavy on Judicial precedent➤ New action required based on the debt – if not under legislation➤ Registration under legislation	<ul style="list-style-type: none">➤ Did the foreign court have proper jurisdiction over the parties (e.g., presence, consent, or submission to jurisdiction).
CIVIL LAW	<ul style="list-style-type: none">➤ Codified Statutes and international treaties➤ Exequatur proceedings	<ul style="list-style-type: none">➤ Was the process properly served➤ Fair procedure engaged?

COMMON LAW VS CIVIL LAW

	Public Policy and Natural Justice	Recognition of Non-Monetary Judgments
COMMON LAW	<ul style="list-style-type: none">➤ Judgment fairly obtained➤ If fraudulently obtained or in breach of public policy not enforceable	<ul style="list-style-type: none">➤ Mostly focus on money judgments
CIVIL LAW	<ul style="list-style-type: none">➤ Public policy relevant on a wider scale e.g. social moral and constitutional values	<ul style="list-style-type: none">➤ Broader range of judgments facilitated



COMMON LAW VS CIVIL LAW

	Role of International Conventions and Treaties	Procedural Complexity and Timeframe
COMMON LAW	<ul style="list-style-type: none">➤ Limited adoption of International Treaties➤ More – Bilateral and Domestic Statutes	<ul style="list-style-type: none">➤ Adversarial and time-consuming – new action or register
CIVIL LAW	<ul style="list-style-type: none">➤ Heavy influence – International Conventions	<ul style="list-style-type: none">➤ Streamlined exequatur process

COMMON LAW VS CIVIL LAW

	Reciprocity
COMMON LAW	➤ Required
CIVIL LAW	<ul style="list-style-type: none">➤ Less emphasis on this➤ Procedural fairness and local laws.

COMMON LAW VS CIVIL LAW

	 <p>COMMON LAW</p> <p>Antigua and Barbuda</p>	 <p>HYBRID</p> <p>Guyana</p>
Streams of enforcement available	<ul style="list-style-type: none">➤ Legislation - The Reciprocal Enforcement of Judgments Act 1922 CAP369➤ Common Law	<ul style="list-style-type: none">➤ Legislation – Foreign Judgments (Reciprocal Enforcement) Act 2023 <p>Sec. 7 – “A foreign judgment shall not be enforced except by registration under this Act.”</p>



How effective are reciprocal enforcement treaties among Commonwealth countries? Are they sufficient, or do gaps remain?

RECIPROCAL ENFORCEMENT “TREATIES”

Hague

- Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters
- 15 of 56 Commonwealth – party to Hague
- Administration of Justice Act 1920 (UK) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (UK) - This one permits direct registration of foreign judgments without the need to re-litigate the case

REASONABLY EFFECTIVE– ASSESSMENT

BENEFITS

- Defined and streamlined process
- Reduced costs
- Timely
- Improved efficiency
- Mutual Recognition and Trust

GAPS

- Limited Scope of Treaties – not all commonwealth countries are parties or adopted in local legislation
- Narrow range of recognised judgments
- Jurisdictional and Procedural Issues
- Public Policy Exceptions
- Lack of Uniformity

SUFFICIENCY OF TREATIES

- Where they exist they are reasonably effective but gaps remain.
- There are gaps altogether across the Family of Nations as there is limited cross border application.





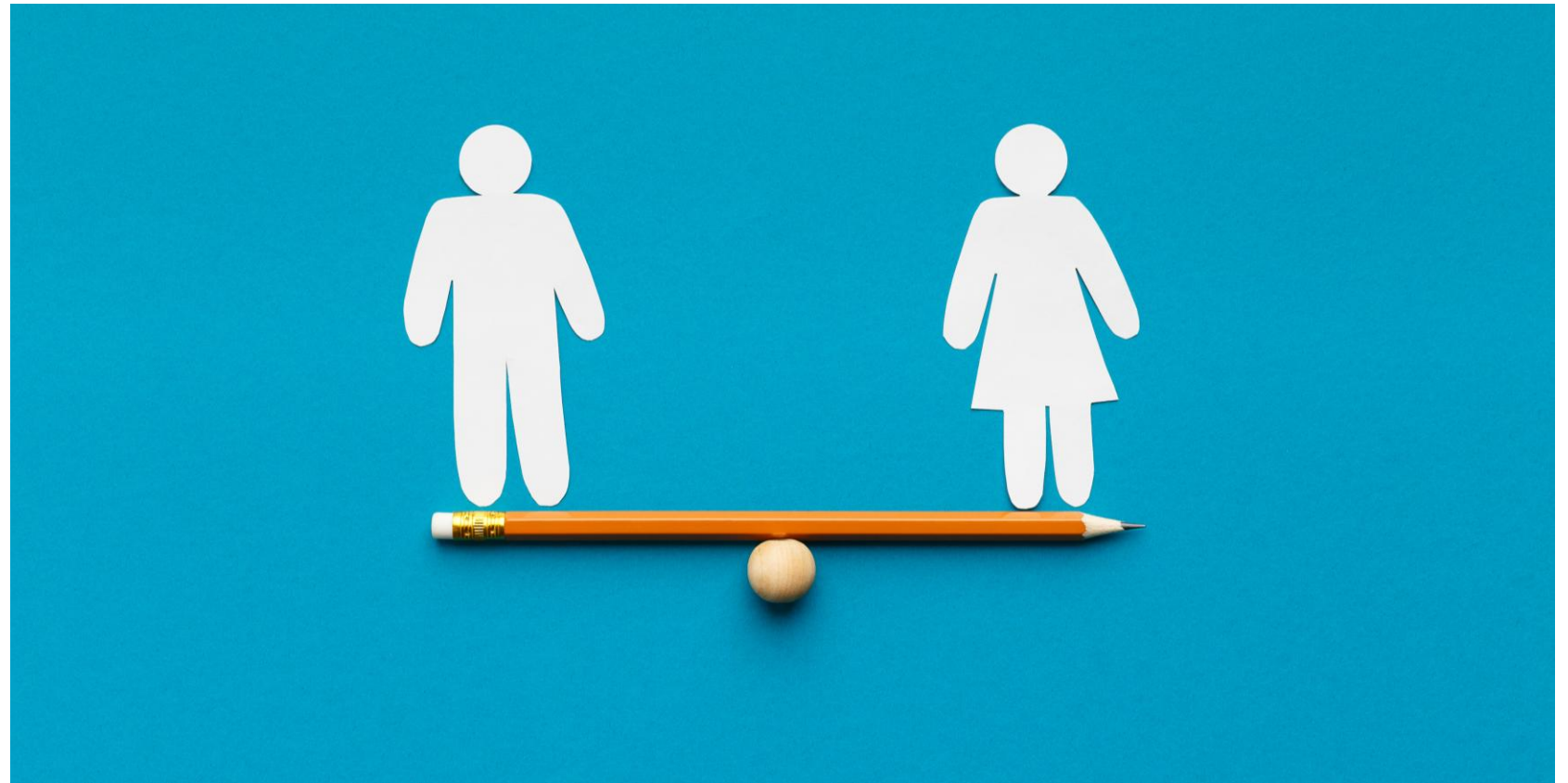
What are the most common public policy objections raised when enforcing foreign judgments, and how do courts balance fairness with enforcement?

PUBLIC POLICY OBJECTIONS



- Contravention of local laws or constitutional principles
- Violation of Fundamental Rights and Due Process
- Fraud in Obtaining Judgment
- Incompatibility with Public Morality or Ethics
- Contrary to International law or human rights
- Conflict with local litigation or Inconsistent judgments
- Breach of comity and reciprocity
- National Security / Political

- Case by Case Analysis
- Comity
- Proportionality Test
- Narrow Interpretation of Public Policy
- Safeguards against abuse




BALANCING FAIRNESS AND ENFORCEMENT

Case by Case
Analysis

ERROL PANTON V DONALD
PANTON AND DESMOND
PANTON [2018] JMCC Comm 46



BALANCING FAIRNESS AND ENFORCEMENT



**Should Commonwealth jurisdictions
harmonise enforcement laws to
create a more unified legal
framework? What would such a
system look like?**



Power of Unification



MODEL LAW ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

- *“Designed to assist member countries to modernise their approach to the recognition and enforcement of foreign judgments. It contains provisions for the enforcement of both monetary and non-monetary judgments...”*
- Longstanding mandate to address the need to reform the area.
- Reflects co-operation over many years between the Commonwealth Secretariat and The Hague Conference on Private International Law.
- Drew from Hague
- Considered and endorsed by Commonwealth Law Ministers at their meeting of October 16-19, 2017 – Nassau, Bahamas.
- Adopted?

WHY HARMONISE

- Consistency and Predictability
- Reduced costs
- Timely
- Enhanced trade and investment
- Prevent forum shopping
- Strengthened judicial cooperation
- Great in concept but reality?



COMMONWEALTH-WIDE UNIFIED APPROACH – OBSTACLES

- Sovereignty and autonomy at risk
- Diverse Legal Traditions
- Public Policy Exceptions
- Capacity and Infrastructure



WHAT COULD IT LOOK LIKE



Yes. It can work. Example - Hague – EU. New York Convention – Arbitration

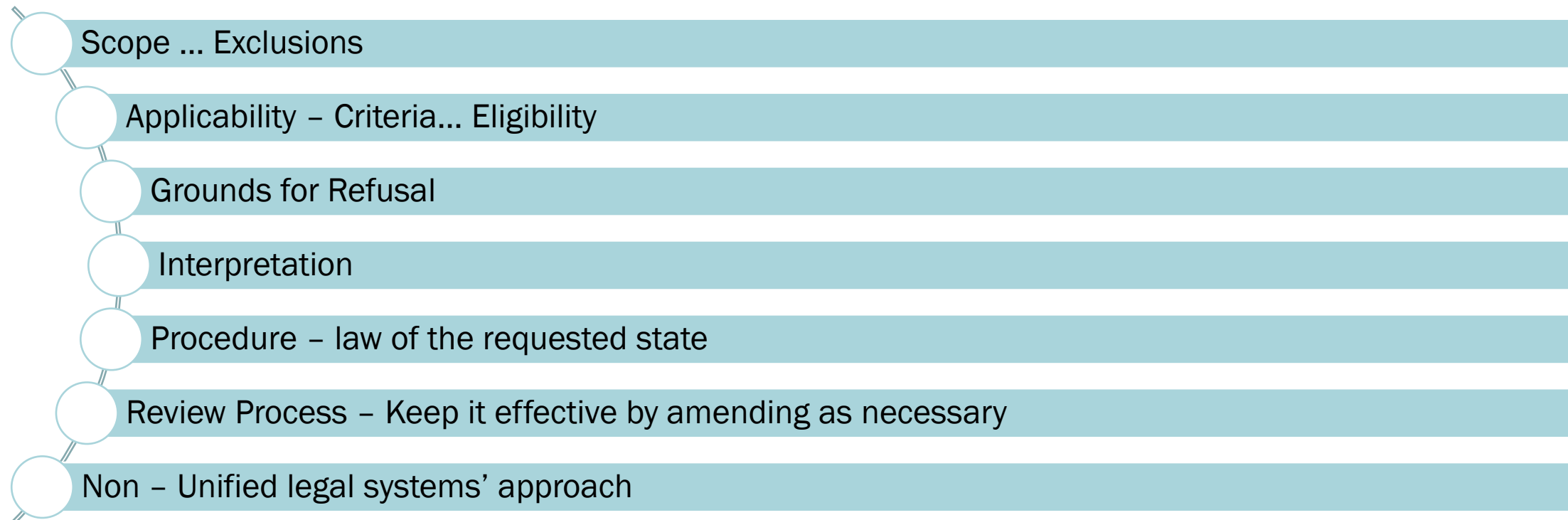
Join and adopt the Hague Convention? Possible?

Create OUR OWN Commonwealth Enforcement Convention

Reciprocal Recognition Mechanism



WHAT COULD IT LOOK LIKE ***CLEAR TERMS***



WHAT COULD IT LOOK LIKE

CLEAR TERMS



Ratification

Permit and provide process for the exclusion of certain States

Denunciation

WHAT COULD IT LOOK LIKE



- Centralised Registration System – Digital Infrastructure
- Judicial Cooperation and Training – Commonwealth Judicial Council
- Model Laws Provided
- Align with established international examples
- Provide Assistance – Technical, Financial
- Tribunal Central resolution of Disputes with appeal process
- Oversight



Thank you

Yolande J Whitely

1-876-927-1235

whitely@nmlscle.com

General Discussion Q & As

