



Enforcement of Foreign Judgments

in 29 jurisdictions worldwide

2014

Consulting editors: Mark Moedritzer and Kay C Whittaker



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Enforcement of Foreign Judgments 2014

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
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First published 2011

Third edition

ISSN 2048-464X

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Printed and distributed by
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Tel: 0844 2480 112

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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

The United States is not a signatory to any convention or treaty which requires recognition or enforcement of non-US court judgments.

While this chapter does not specifically address international arbitration awards, it is worth noting that the US is a party to multilateral conventions that bear on US court enforcement of these awards: the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the Inter-American Convention on International Commercial Arbitration (the Panama Convention). Awards issued pursuant to the New York and Panama Conventions face an easier path to enforcement in the US than foreign judgments do, as these awards are subject to mandatory enforcement, with provision for only limited defences.

The US is also party to the multilateral Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention). Awards falling under the ICSID Convention are to be treated by signatory states as though they were enforcing domestic court awards.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

No. Recognition and enforcement is typically regulated on a state-by-state basis, though the law in most states can be traced back to the principles set forth in the US Supreme Court case *Hilton v Guyot*, 159 US 113 (1895).

Despite sharing origins in the *Hilton* case, state-law approaches to foreign judgments display some significant differences, including their treatment of a reciprocity requirement as a prerequisite to recognition and enforcement.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

Recognition of foreign judgments is provided by the statutory laws of the individual states or by common law. There is no federal statutory provision governing recognition or enforcement of non-US court judgments; nor will non-US judgments be recognised through use of a letter rogatory.

To address the concern that non-US courts were not recognising US judgments due to US courts' own frequent non-recognition of foreign judgments, the 1962 Uniform Foreign Money-Judgments Recognition Act (the 1962 Model Act) was written – generally

codifying the principles set forth in *Hilton v Guyot*, 159 US 113 (1895) – and was adopted by 31 states, the District of Columbia, and US Virgin Islands.

The 1962 Model Act was updated in 2005 as the Uniform Foreign-Country Money Judgments Recognition Act (the 2005 Model Act), which has been adopted by 18 states and the District of Columbia. Massachusetts and Mississippi have introduced legislation in 2013 to adopt the 2005 Model Act.

The US Supreme Court has never passed upon the question of whether federal or state law governs the recognition of foreign nation judgments. The consensus among the state courts and lower courts that have passed upon the question is that, apart from federal question cases, such recognition is governed by state law and that the federal courts will apply the law of the state in which they sit.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

The US is not a signatory to this Convention.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

The 2005 Model Act provides that '[a]n action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.' The statute of limitations varies, according to state law, in jurisdictions that have not adopted the 2005 Model Act.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Typically, US courts are willing to entertain the recognition and enforcement of foreign civil judgments for a fixed sum of money, excluding judgments for fines, penalties or taxes.

The courts of one nation will not enforce the penal laws of another nation. See *Huntington v Attrill*, 146 US 657, 673-674 (1892). The question of whether a statute of one state is a penal law depends on whether its purpose is to punish an offence against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act. *Id.*

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Most US states require the party seeking to enforce a foreign judgment to file an enforcement action in a court that has an adequate basis to exercise jurisdiction over the alleged judgment creditor. Actions may be brought in a state court or a federal court. However, as noted in question 3, a federal court sitting in diversity will apply the substantive law of the state in which it sits, based on *Erie RR Co v Tompkins* principles.

Federal question jurisdiction may exist in specialised cases.

A party may seek to enforce under the Federal Arbitration Act an international arbitral award obtained under the New York or Panama Convention.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

A foreign court judgment cannot be enforced before being recognised. The 1962 and 2005 Model Acts deal with the recognition of judgments. Once a judgment has been recognised and is no longer subject to review, the judgment creditor can commence the enforcement process.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

Defendants may avail themselves of the defences (ie, the mandatory and discretionary bases for non-recognition of judgment) contained in the 1962 and 2005 Model Acts (see question 11). Where a foreign judgment offends international standards or runs contrary to US constitutional principles, US courts will generally refuse to recognise and enforce it. See for example *Osorio v Dole Food Co*, 665 F Supp 2d 1307 (SD Fla 2009), aff'd sub nom *Osorio v Dow Chem Co*, 635 F3d 1277 (11th Cir 2011). In *Osorio*, the court refused to recognise the foreign judgment on multiple independent grounds, including lack of impartial tribunals, lack of due process, and on public policy grounds. Id at 1352.

US courts, like many courts worldwide, seek to avoid relitigating the merits of cases in the context of judgment recognition; but as the Supreme Court cautioned in *Hilton*, that goal must be balanced against the need to protect US citizens in the administration of justice. *Hilton*, 159 US at 163-64: “Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.”

Note that international arbitral awards obtained under the New York or Panama Convention are subject to specific defences to enforcement as laid out by the texts of those Conventions.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

There is currently disagreement across US states on this point. A declaration of non-recognition was issued within the Ninth Circuit, but a similar declaration was struck down in the Second Circuit.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

A final, conclusive and enforceable judgment, often required to be a civil judgment for a fixed sum of money, is the starting point for recognition by a US court. Unlike some countries, this does not mean that the foreign judgment is no longer subject to any appeals, though in many states if a judgment is still subject to appeal any recognition and enforcement action will be stayed.

Mandatory non-recognition

Under the 1962 and 2005 Model Acts, mandatory non-recognition of a foreign judgment is required where:

- the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- the foreign court did not have personal jurisdiction over the defendant; or
- the foreign court did not have jurisdiction over the subject matter.

For further information, see the Uniform Foreign Money-Judgments Recognition Act (1962) § 4(a) (Grounds for Non-Recognition) and the Uniform Foreign-Country Money Judgments Recognition Act (2005) § 4(b).

Discretionary grounds for non-recognition

The 2005 Model Act provides that courts in a state adopting the Act:

...need not recognize a foreign-country judgment if:

1. the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
2. the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
3. the judgment or the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state or of the United States;
4. the judgment conflicts with another final and conclusive judgment;
5. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
6. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
7. the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
8. the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

For further information, see the Uniform Foreign-Country Money Judgments Recognition Act (2005) § 4(c). The 1962 Model Act also includes the first six of the above factors.

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

While *Hilton* contained a reciprocity requirement, such a requirement is retained by only a minority of states.

In addition, US courts have placed limitations on the principle of ‘comity’, finding that it must be applied in a manner consistent with ‘the rights of [US] citizens or of other persons who are under the protection of [US] laws.’ *Hilton*, 159 US at 163-64; see also *De Brimont v Penniman*, 7 F Cas 309 (CCSDNY 1873) (‘[comity] does not require, but rather forbids it, when such a recognition works a direct violation of the policy of our laws, and does violence to what we deem the rights of our own citizens.’).

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

Yes, both Model Acts provide for mandatory non-recognition of foreign judgments where rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law. As the court said in *Osorio*, ‘a judicial safety valve is needed for cases such as [*Osorio*], in which a foreign judgment violates international due process, works a direct violation of the policy of our laws, and does violence to what we deem the rights of our citizens.’ Order on Motion for Reconsideration at 7, *Osorio*, 665 F Supp 2d 1307 (No. 07-22693).

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

A defendant may seek to defeat enforcement of a foreign judgment on the basis that the foreign tribunal lacked personal jurisdiction over the defendant. A foreign judgment is not conclusive in a US court if the foreign country court did not have personal jurisdiction over the defendant. See *Bank of Montreal v Kough*, 430 F Supp 1243, 1246 (DCCal 1977). Many US courts consider both whether the foreign court properly exercised jurisdiction under its own laws and whether it had jurisdiction under US principles. If the foreign or US standards for jurisdiction are not satisfied, the judgment will not be recognised.

That said, there are certain ways in which personal jurisdiction can be waived. See, for example, the Uniform Foreign-Country Money Judgments Recognition Act (2005) § 5.

A judgment debtor may be faced with the quandary of appearing in a foreign action where they believe the odds are stacked against them, thereby potentially submitting to personal jurisdiction, or refusing to appear and permitting the expected judgment to be entered, while preserving a stronger position for challenging jurisdiction. This ‘catch 22’ may put foreign defendants at a distinct disadvantage vis-à-vis jurisdiction.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

A defendant may seek to defeat enforcement of a foreign judgment on the basis that the foreign tribunal lacked subject matter jurisdiction over the action. Both Model Acts provide that lack of subject matter jurisdiction precludes a US court’s recognition of a foreign judgment. See also *Osorio*, 665 F Supp 2d at 1326 (holding that defendants invoked their opt-out rights under local law, thereby divesting the local trial court of jurisdiction and preventing judgment enforcement under Florida law).

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The guiding principle in determining whether a litigant in proceedings before a foreign court had notice of the proceedings so as to allow enforcement of the foreign judgment is whether a reasonable method of notification was employed and reasonable opportunity to be heard was afforded to the person affected. See *Somportex Limited v Philadelphia Chewing Gum Corp*, 453 F 2d 435, 443 (3rd Cir 1971); and the Uniform Foreign Money-Judgments Recognition Act (1962) § 4(b) (a foreign judgment need not be recognised if ‘the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend’); Uniform Foreign-Country Money Judgments Recognition Act (2005) § 4(c) (same).

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

Yes, however objecting to a foreign judgment on the basis that the forum was inconvenient is not frequently invoked. The 1962 Model Act, which is still followed by many states, provides that a US court may deny recognition where ‘the original action should have been dismissed by the court in the foreign country on grounds of forum non conveniens’.

18 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Yes; as noted in question 11, courts may refuse to recognise a judgment after a showing that the foreign judgment was obtained fraudulently. See the Uniform Foreign Money-Judgments Recognition Act (1962), § 4(b)(2); and the Uniform Foreign-Country Money Judgments Recognition Act (2005), § 4(c)(2).

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction’s public policy and substantive laws?

Yes, US courts may refuse to recognise judgments that contravene public policy. As described in question 11, courts may and do refuse to recognise judgments if ‘the judgment or the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of [the] state’ (Uniform Foreign Money-Judgments Recognition Act (1962), § 4(b)(3); Uniform Foreign-Country Money Judgments Recognition Act (2005), § 4(c)(3)).

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

Under the law of every state adopting one of the Model Acts, ‘[a] foreign judgment need not be recognised if...the judgment conflicts with another final and conclusive judgment[.]’ See, for example, the Uniform Foreign Money-Judgments Recognition Act (1962), § 4(b)(4); the Uniform Foreign-Country Money Judgments Recognition Act (2005), § 4(c)(4); and the Restatement (Third) of Foreign Relations Law § 482(2)(e) (1987). For example, in *Byblos Bank Europe, SA v Syrketi*, 10 NY 3d 243 (NY 2008), the New York

Court of Appeals noted that New York courts may in the exercise of discretion refuse to enforce a foreign judgment that ‘conflicts with another final and conclusive judgment’. The NY statute however, does not specify which, if any, of the two conflicting foreign judgments is entitled to recognition; thus, the court may recognise the earlier judgment, the later judgment or neither of them. The *Byblos* court noted that ‘[t]he last-in-time rule, applicable in resolving sister state judgments under the Full Faith and Credit Clause of the Constitution, need not be mechanically applied when inconsistent foreign country judgments exist’ (*Byblos Bank Europe, SA*, 10 NY 3d at 249).

Ultimately, the *Byblos* court held that the trial court did not abuse its discretion under the Recognition Act in denying recognition of a Belgian judgment, which disregarded and conflicted with a previously rendered Turkish judgment. The court found that where the Belgian judgment departed from generally accepted principles of *res judicata* and comity, the last-in-time rule should not be applied.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

This is a complex issue not treated uniformly in all states. There is some support for the argument that alter ego and agency principles apply in recognition of judgments.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

All states that follow or have enacted the 1962 or 2005 Model Act recognise that ‘[a] foreign judgment need not be recognized if...the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court’. See, for example, the Uniform Foreign Money-Judgments Recognition Act (1962), § 4(b)(5); the Uniform Foreign-Country Money Judgments Recognition Act (2005), § 4(c)(5): ‘[a] court of this state need not recognise a foreign-country judgment if...the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court’; accord Restatement Third of Foreign Relations Law § 482(2)(f). Courts applying this section of the Model Acts have generally applied it in cases in which parties had previously agreed to a particular forum, or had agreed to arbitrate. See, for example, *Tyco Valves & Controls Distribution GMBH v Tippins Inc*, No. CIV A 04-1626, 2006 WL 1914814 at *7 (WD Pa Oct 10, 2006) (declining to enforce German judgment because it was contrary to agreement between the parties to arbitrate); *Nicor International Corp v El Paso Corp*, 318 F Supp 2d 1160, 1167 (SD Fl 2004) (applying Texas common law and finding that proceedings in the Dominican Republic were not entitled to recognition because they were contrary to an agreement to arbitrate); *The Courage Co v The Chemshare Corp*, 93 SW 3d 323, 336 (Tx Ct App 2002) (refusing to recognise or enforce Japanese judgment because the parties had agreed to arbitrate).

23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

While the uniform acts do not provide for disparate treatment between foreign countries’ judgments, in practice, courts may find that certain countries’ legal systems are less reliable than others,

particularly where courts have a history of refusing to recognise a certain country’s judgments for due process reasons. Conversely, courts may also find that a foreign country’s legal system is reliable and compatible with US due process of law. See, for example, *Soc’y of Lloyd’s v Ashenden*, 233 F 3d 473, 476 (7th Cir 2000): ‘The courts of England are fair and neutral forums’, and ‘[t]he origins of our concept of due process of law are English’ (quoting *Riley v Kingsley Underwriting Agencies Ltd*, 969 F 2d 953, 958 (10th Cir 1992)).

In addition, in states that still require reciprocity of judgment recognition, foreign states not providing for reciprocal treatment are *de facto* disfavoured.

24 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

Although there is little case law on alteration of awards, courts have engaged in this type of partial recognition and enforcement in the past, when involving arguments related to public policy or penalty issues. For example, the Second Circuit has explicitly stated that a court may sever a portion of a judgment and refuse to recognise it on public policy grounds, while recognising the rest of the judgment. In *Ackermann v Levine*, 788 F 2d 830 (2d Cir 1986), the court held that ‘courts are not limited to recognising a judgment entirely or not at all. Where a foreign judgment contains discrete components, the enforcing court should endeavor to discern the appropriate “extent of recognition”.’ *Id.* at 844. As a result, the court upheld the majority of a German judgment but refused to recognise a portion of the monetary award on public policy grounds. And in *Sarl Louis Feraud Intern v Viewfinder Inc*, 406 F Supp 2d 274, 278 (SDNY 2005), *rev’d on other grounds, Sarl Louis Feraud Intern v Viewfinder Inc*, 489 F 3d 474 (2007), the New York trial court noted that courts may sever the unenforceable penal portion of a judgment, while enforcing the rest of the judgment. *Id.* at 278: ‘there is no reason whatsoever the compensatory aspect of the original judgment is affected in any way by the failure to enforce the [penalty portion].’

However, foreign judgment suffering from certain types of defects are impossible to ‘partition’ so as to grant partial recognition. For example, judgments procured by fraud or rendered under a system lacking due process or impartial tribunals are impossible to partition because these egregious infractions render the entire product of such proceedings unrecognisable.

25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Varying standards are applied by court to determine the date of conversion, which will affect the exchange rate between the dollar and the currency in which the judgment was rendered. The ‘breach day’ rule fixes the exchange rate at the date the foreign judgment was rendered. The ‘judgment-day’ rule applies the date of the US judgment. Recently, other approaches have been adopted or encouraged such as the ‘payment-day’ rule (fixing at the date of the judgment is satisfied) and the Restatement (Third) Foreign Relations Laws’ less rigid standard that permits courts to award payment in whichever way will best make whole the prevailing party.

26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

Yes. Judgment debtors have the right to appeal. A trial court may require the judgment debtor to post an appeal bond before issuing a stay of execution of its ruling.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

The 2005 Act provides that recognised judgments are 'enforceable in the same manner and to the same extent as a judgment rendered in this state'. While the 2005 Act does deal with the particulars of judgment enforcement, all states (including Washington DC and the US Virgin Islands) except for California, Vermont and Massachusetts have enacted the Uniform Enforcement of Foreign Judgments Act. (Massachusetts has pending legislation to adopt the Act.) This Act applies to both judgments of US sister states and to those of 'any other court which is entitled to full faith and credit' of the relevant state. Where states have adopted both the Recognition and Enforcement Act, a path to enforcement is more clearly prescribed than where the enforcing state has not done so.

Update and trends

As described in this chapter, US courts are increasingly plagued by suspect foreign judgments from foreign courts. There is increasing concern about whether the traditional recognition and enforcement principles adequately protect US citizens from enforcement of unfair, fraudulent or corrupt foreign judgments.

Additionally, there is an ongoing debate regarding whether and how the Hague Convention on Choice of Court Agreements (though not yet in force) would impact current US recognition and enforcement laws, and whether the US should enact a uniform federal law to govern recognition and enforcement.

28 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Judgment creditors bringing suspect foreign judgments that lack indicia of fairness or due process should not presume that they will be rubber stamped. See, for example, *Osorio v Dole Food Co*, 665 F Supp 2d 1307 (SD Fla 2009).

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