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The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2016

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USA



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1 Country Finder

- 1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Common law	All countries	Sections 2, 4, and 5
Uniform Foreign Money Judgments Recognition Act (1962)	All countries (adopted by a majority of U.S. states)	Sections 2, 4, and 5
Uniform Foreign- Country Money Judgments Recognition Act (2005)	All countries (adopted by a minority of U.S. states)	Sections 2, 4, and 5

2 General Regime

- 2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

The United States is not a party to any treaty on the recognition and enforcement of foreign judgments, nor does it have federal laws governing foreign judgments. The applicable legal framework for enforcing foreign judgments in the United States is found in the local laws of the different states. This local law must be the first stop for any practitioner seeking recognition and enforcement of a foreign judgment in the U.S. The various state laws, however, share certain fundamental principles. Courts will, for example, generally accord foreign judgments substantial deference under the principle of comity, as expressed by the U.S. Supreme Court in *Hilton v. Guyot*, 159 U.S. 113 (1895). Further, most states, including New York, Florida, and Texas, have enacted some version of the Uniform Foreign Money Judgments Recognition Act of 1962 (the “1962 Uniform Act”), which governs the recognition of foreign money judgments. A number of states, including California and the District of Columbia, have enacted some version of the revised 2005 Uniform Foreign-Country Money Judgments Recognition Act (the “2005 Uniform Act”). Even where individual state statutes are modelled on one of the Uniform Acts, such statutes can differ between states, as do different state courts’ interpretations of the statutes. It should be

noted that arbitration awards receive more favourable treatment than foreign judgments because the United States is a party to the United Nations Convention and the Panama Convention on the recognition and enforcement of foreign arbitral awards.

- 2.2 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?**

Foreign money judgments subject to recognition and enforcement under the Uniform Acts must grant or deny recovery of a sum of money. Judgments granting declaratory or injunctive relief are excluded from coverage by the Uniform Acts, as are judgments for taxes, fines or other penalties, or judgments for support in matrimonial or family matters. See 1962 Uniform Act § 1(2); 2005 Uniform Act § 3; see also N.Y. C.P.L.R. § 5301(b); CAL. CIV. PROC. CODE § 1715(a)-(b). The fact that a particular type of judgment is not covered by the Uniform Acts does not necessarily mean that such judgment is unenforceable, as discussed in question 2.6 below.

Generally recognised rules of comity provide that a court will only recognise a “final and valid” foreign judgment. See *Pilkington Bros. P.L.C. v. AFG Indus. Inc.*, 581 F. Supp. 1039, 1045 (D. Del. 1984). Both Uniform Acts provide that a foreign judgment must also be: (i) final; (ii) conclusive; and (iii) enforceable in its country of origin. See 1962 Uniform Act § 2; 2005 Uniform Act § 3(a)(2); N.Y. C.P.L.R. § 5302; CAL. CIV. PROC. CODE § 1715(a)(2); FLA. STAT. § 55.603 (2015). Under the 1962 Uniform Act, a foreign judgment is “final” even if an appeal of the judgment is pending or the judgment is subject to appeal. See 1962 Uniform Act § 2. However, as a practical matter, a U.S. court will often stay proceedings if there is an appeal pending in the country of origin. See, e.g., N.Y. C.P.L.R. §§ 5302, 5306; CAL. CIV. PROC. CODE § 1720; FLA. STAT. §§ 55.603, 55.607 (2015). A foreign money judgment is considered “conclusive” between the parties to the extent it grants or denies recovery of a sum of money. See, e.g., N.Y. C.P.L.R. § 5303; CAL. CIV. PROC. CODE § 1715(a); FLA. STAT. § 55.603 (2015). To determine if a foreign judgment is enforceable in its home jurisdiction, a U.S. court will examine whether the judgment is capable of being enforced under the law of the country where the judgment was issued. See *Sea Trade Maritime Corp. v. Coutsodontis*, 21 N.Y.S. 3d 887, 887 (N.Y. App. Div. 2016); *Soc’y of Lloyd’s v. Sumerel*, No. 2:06-cv-329-FtM-29DNF, 2007 WL 2114381, at *5 (M.D. Fla. July 20, 2007).

The requisite form of a foreign judgment eligible for recognition varies from state to state. New York, for example, requires an authenticated copy of the foreign judgment and an English translation of the judgment accompanied by an affidavit by the translator. See N.Y. C.P.L.R. §§ 2101(b), 5402(a). Other formalities may apply depending on local state rules.

2.3 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

“Recognition” and “enforcement” are distinct concepts in U.S. practice. A party seeking to enforce a foreign judgment must first sue in federal or state court to have the judgment “recognised” – in other words, converted into a U.S. judgment and thus considered *res judicata* (claim preclusive) with respect to other actions between the parties in the recognising jurisdiction. Once it is judicially recognised, a foreign judgment is enforceable as a domestic judgment, and is entitled to full faith and credit in other U.S. courts. See *Nadd v. Le Credit Lyonnais, S.A.*, 804 So.2d 1226, 1231-33 (Fla. 2001). The judgment can be enforced against assets over which the enforcing court has jurisdiction. These are generally assets within the state.

2.4 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

To recognise and enforce a foreign judgment, a U.S. court must generally have: (1) personal jurisdiction over the judgment debtor or jurisdiction over the judgment debtor’s assets in the forum state; and (2) subject matter jurisdiction over the action. Although the precise formulation of the standard for personal jurisdiction varies from state to state, the touchstone for personal jurisdiction over a non-resident judgment debtor is whether the debtor has “minimum contacts” with the forum state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice”. See *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945). In New York, a judgment creditor seeking recognition and enforcement of a foreign judgment does not need to establish personal jurisdiction over the judgment debtor, at least when the judgment debtor’s assets are located in the state. See *Lenchyslyn v. Pelko Electric Inc.*, 281 A.D.2d 42, 47 (N.Y. App. Div. 2001). Similarly, other states require personal jurisdiction over the judgment debtor or the debtor’s property in order to recognise and enforce a foreign judgment in their state. See, e.g., *Electrolines, Inc. v. Prudential Assurance Co., Ltd.*, 260 Mich. App. 144, 163 (Mich. Ct. App. 2003); Restatement (Third) of Foreign Relations Law § 481 cmt. h (1987). Subject matter jurisdiction is mainly an issue in federal court because the federal courts have limited subject matter jurisdiction specified in federal law whereas the state courts have general subject matter jurisdiction. A party may only seek recognition of a foreign judgment in federal court if there is either diversity jurisdiction (*i.e.*, the claim exceeds \$75,000 and the parties are citizens of different states) or federal question jurisdiction (*i.e.*, the claim arises under U.S. federal law). See 28 U.S.C. §§ 1331-1332. Even if enforcement can be sought in federal court, local state law would apply to the substantive issues.

Each state has its own procedures for recognising and enforcing foreign judgments. Generally, a party must either commence a new action seeking recognition or seek recognition through a counterclaim, cross-claim, or affirmative defence in a pending action. See, e.g., N.Y. C.P.L.R. § 5303; CAL. CIV. PROC. CODE § 1718. Some states, like New York, allow a party to seek an expedited judgment recognising a foreign judgment. See N.Y. C.P.L.R. § 5303. The party must establish that the foreign judgment is final, conclusive, and enforceable in its country of origin; this is typically accomplished by presenting a certified copy of the foreign judgment, an official translation, and often a witness statement from a lawyer from the foreign jurisdiction explaining that the judgment is authentic and final. See FED. R. CIV. P. 44(a)(2) (requirements for authenticating a foreign record). Assuming that there are no disputes of material fact, the U.S. court will decide whether the

foreign judgment may be recognised as a legal question (*i.e.*, without a jury). The court recognises the foreign judgment by entering a local judgment on it.

2.5 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

A defendant can oppose the recognition of a foreign judgment by raising defences derived from the concept of comity. Under this principle, courts will not recognise foreign judgments where doing so would be “prejudicial to the interests” of the U.S., *Int’l Nutrition Co. v. Horphag Research Ltd.*, 257 F.3d 1324, 1329 (Fed. Cir. 2001), or where a foreign judgment was “obtained in a manner that did not accord with the basics of due process”. *Bank Mellī Iran v. Pahlavi*, 58 F.3d 1406, 1410 (9th Cir. 1995). Due process in this context generally demands that the foreign court had personal jurisdiction over the defendant and that the defendant had notice and the opportunity to defend against the plaintiff’s claims before an impartial tribunal. *Hilton*, 159 U.S. at 205-06; *Soc’y of Lloyd’s v. Reinhardt*, 402 F.3d 982, 992-93 (10th Cir. 2005). While U.S. courts do not require that the laws and procedures of the rendering nation be identical to those in the U.S., courts will look to ensure that the foreign court procedures are “fundamentally fair”. *Soc’y of Lloyd’s v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000) (internal quotation marks omitted).

Each state that has adopted a statutory version of one of the Uniform Acts has also adopted mandatory and discretionary grounds to refuse recognition of a foreign judgment. The grounds to refuse recognition vary by state, even in those states that have statutes based on the same Uniform Act. For example, New York courts must refuse to recognise a foreign judgment if: (i) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law; and/or (ii) the foreign court did not have personal jurisdiction over the defendant. N.Y. C.P.L.R. § 5304(a). New York courts can also refuse to recognise a foreign judgment if they find: (1) a lack of subject matter jurisdiction by the rendering court; (2) inadequate notice to defendant; (3) fraud in obtaining the foreign court judgment; (4) the cause of action on which the judgment is based is repugnant to public policy; (5) the foreign judgment conflicts with another final and conclusive judgment; (6) the foreign court proceeding 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; (7) the foreign court was a seriously inconvenient forum for the trial of the action; or (8) the cause of action resulted in defamation judgment that did not afford the defendant the freedom of speech and press as provided under U.S. and state laws. See N.Y. C.P.L.R. § 5304(b).

The party seeking to avoid recognition of the foreign judgment must show that there is an applicable ground for non-recognition. See 1962 Uniform Act § 4(d). The party may raise such grounds as defences to a recognition action. U.S. courts are likely to deny recognition of a foreign judgment if it was rendered by a judicial system that failed to provide due process. See *Int’l Transactions, Ltd. v. Embotelladora Agral Regiomontana, S.A.*, 347 F.3d 589, 593-97 (5th Cir. 2003). The courts will also deny recognition if the judgment violates U.S. public policy, although this standard is high and rarely met. See *Sarl Louis Feraud Int’l v. Viewfinder, Inc.*, 489 F.3d 474, 479 (2d Cir. 2007). A foreign judgment only violates public policy if it is directly contrary to a fundamental U.S. policy, or violates the most basic notions of U.S. morality and justice. See *Sung Hwan Co., Ltd. v. Rite Aid Corp.*, 850 N.E. 2d 647, 650 (N.Y. 2006) (internal citation omitted). For example, a foreign

judgment that impinges on an individual's freedom of religion, speech, press or assembly – as outlined in the First Amendment of the U.S. Constitution – may be found to be repugnant to U.S. public policy and therefore subject to non-recognition. In this regard, a New York state court refused to recognise an English libel judgment on the ground that doing so would impinge on the constitutionally guaranteed rights of freedom of speech and press. *Bachchan v. India Abroad Publ'n Inc.*, 154 Misc. 2d 228, 230 (N.Y. Sup. Ct. 1992).

Counsel should consult the laws of the individual states as each state that has adopted a version of the Uniform Acts has varying mandatory and discretionary bases for non-recognition of a foreign judgment.

2.6 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

As noted in questions 2.1 and 2.2 above, the Uniform Acts apply specifically to foreign money judgments. The Uniform Acts do not apply to foreign judgments for taxes, fines, penalties or domestic relations.

Because taxes, fines, and monetary penal judgments serve to raise revenue for public purposes and are generally considered to be matters of public law, they are outside of the scope of recognition and enforcement of judgments in private civil suits. *See* Restatement (Third) of Foreign Relations Law § 483, n.3 (1987) (noting that “[u]nless required to do so by treaty, no state enforces the penal judgments of other states”). As a general rule, the U.S. adheres to the concept that the courts of one nation will not enforce the penal laws of another nation. *See Huntington v. Attrill*, 146 US 657, 673-74 (1892). Courts must determine whether the nature of a money judgment is remedial. If a money judgment is directed to a private individual, and does not stand to redress a public wrong, recognition can be sought in the U.S. *See, e.g., Plata v. Darbun Enters., Inc.*, No. D062517, 2014 WL 341667, at *5 (Cal. Ct. App. 2014).

By contrast, while the Uniform Acts do not require recognition of domestic relations judgments, *see* 2005 Uniform Act § 3(b)(3), they do not prohibit recognition of such judgments. Domestic relations judgments may be recognised under common law principles of comity. Several federal statutes and international agreements also facilitate the recognition of domestic relations judgments across borders. These include the International Support Enforcement Act, 42 U.S.C. § 659a (1996), the 1980 Hague Convention on the Civil Aspects of International Child Abduction, and the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

2.7 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

- (a) In states that have enacted statutes modelled after either of the Uniform Acts, a court may decline to recognise a foreign judgment if it “conflicts with another final and conclusive judgment”. *See, e.g., N.Y. C.P.L.R. § 5304(b)(5)*. In general, the later of the two inconsistent judgments will be recognised by a U.S. court; however, courts have the discretion to recognise the earlier judgment or neither one. Restatement (Third) of Foreign Relations Law § 482 cmt. g (1987).
- (b) Depending on the state, local proceedings that are pending between the parties can affect the treatment of a foreign judgment. Some states – like New York and California –

allow parties seeking enforcement of foreign judgments in pending state actions to raise the issue as a counterclaim, cross-claim or affirmative defence seeking preclusive recognition. *See N.Y. C.P.L.R. § 5303; CAL. CIV. PROC. CODE § 1718(b)*. Other states – like Texas – require a party seeking enforcement of a foreign judgment to file an authenticated copy of the foreign money judgment with the court *in lieu* of commencing a separate action. *See TEX. CIV. PRAC. & REM. § 35.003*.

2.8 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

As discussed in question 2.5, there are several mandatory and discretionary bases for non-recognition of a foreign judgment under the Uniform Acts. If a foreign judgment conflicts with local U.S. law, the party seeking to prevent recognition may argue that it conflicts with U.S. public policy. However, as noted above, the courts apply a high standard to the public policy defence. A foreign judgment does not automatically offend U.S. public policy merely because it conflicts with local law. *See Sarl Louis Feraud Int'l*, 489 F.3d at 478-80.

As discussed in questions 2.5 and 2.7, a party may challenge recognition of a foreign judgment if there is a conflicting “final and conclusive judgment.” *See, e.g., N.Y. C.P.L.R. § 5304(b)(5)*. The state statutes that include this discretionary basis for non-recognition do not specify whether only the same parties, or parties in privity with them, may raise this defence.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

The fact that the foreign court applied either U.S. federal law or state law when rendering its judgment would not result in the examination of the merits of the judgment by the court where recognition or enforcement is sought. This is true even if a party asserts that the foreign court incorrectly applied U.S. law.

2.10 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

As discussed above in question 2.1, it is critical to evaluate the law of the state where recognition and enforcement are sought. Each U.S. jurisdiction has its own law on foreign judgments. Most states have adopted statutes that generally mirror the 1962 or 2005 Uniform Acts but with various differences; some states continue to follow *Hilton's* common law approach. Each state's rules are different. For example, if the foreign court did not have subject matter jurisdiction over the dispute, the governing Florida and California statutes require denying recognition of the foreign judgment. *FLA. STAT. ANN. § 55.605(1)(c); CAL. CIV. PROC. CODE § 1716(b)(3)*. New York courts, by contrast, have the discretion to deny recognition on this basis but are not required to do so. *N.Y. C.P.L.R. § 5304*.

The Florida courts and those of a few other states have the statutory discretion to refuse to recognise a foreign judgment if the foreign jurisdiction would not reciprocate by recognising a Florida judgment. *FLA. STAT. ANN. § 55.605(2)(g)*. New York and California do not require reciprocity.

2.11 What is the relevant limitation period to recognise and enforce a foreign judgment?

Each U.S. state has its own statutes of limitations. The 1962 Uniform Act does not contain a statute of limitations; the states that have adopted the 1962 Uniform Act apply either the state's general statute of limitations or the statute of limitations for the enforcement of domestic judgments. The 2005 Uniform Act has a statute of limitations providing that a party seeking recognition of a foreign judgment must sue within the earlier of the time during which the foreign judgment is effective in the foreign country or 15 years from the date that the foreign judgment becomes effective in the foreign country. Some states that have adopted the 2005 Uniform Act have adopted a different time limitation. For example, California requires that "[a]n action to recognise a foreign-country judgment shall be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country". CAL. CIV. PROC. CODE § 1721.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment or arbitral award satisfy in order to be recognised and enforceable under the respective regime?

This is not applicable in the U.S. See Section 2 above.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

This is not applicable in the U.S. See Section 2 above.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment or arbitral award.

This is not applicable in the U.S. See Section 2 above.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment or arbitral award be challenged under the special regime? When can such a challenge be made?

This is not applicable in the U.S. See Section 2 above.

4 Enforcement

4.1 Once a foreign judgment or arbitral award is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Recognition of a foreign judgment makes it enforceable like a domestic judgment. See, e.g., N.Y. C.P.L.R. § 5303; CAL. CIV. PROC. CODE § 1719(b); FLA. STAT. ANN. § 55.604(5). In New York, for example, the methods available to enforce a judgment are set forth in New York's Civil Practice Law and Rules. These methods include enforcement devices such as: (1) the *restraining notice*, which can be served without court leave and can be used to freeze property while other devices are used to obtain it; (2) *subpoenas*, which the judgment creditor can use to inquire into the existence and location of the judgment debtor's property; (3) *property execution*, which can direct an authorised official like a sheriff or marshal to seize and sell the debtor's property and pay the judgment creditor out of the proceeds; and (4) *income execution*, which allows the judgment creditor to reach up to 10% of the debtor's income. See N.Y. C.P.L.R. §§ 5222-31.

Notably, New York law also provides for a "turn-over" order, which can require turn-over of a judgment debtor's assets held by a third party subject to the state's jurisdiction – in some cases, even if the judgment debtor and its assets are located outside of the U.S. See N.Y. C.P.L.R. §§ 5225-27. Recent developments in New York's "turn-over" actions are further discussed in question 5.1 below.

Many states exempt certain property of individual debtors from enforcement, often subject to a monetary cap. See, e.g., N.Y. C.P.L.R. §§ 5205-06.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments or awards? Please provide a brief description.

As discussed above, New York law allows a judgment creditor to identify, restrain and ultimately obtain a judgment debtor's assets or accounts held by third-party financial institutions. See N.Y. C.P.L.R. §§ 5225-27. The state's highest court seemingly extended the reach of the courts even further by ordering a bank that was subject to the state's jurisdiction to deliver a judgment debtor's stock certificates that were physically located outside of the U.S. See *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533 (N.Y. 2009).

However, in October 2014, the same court appeared to limit the reach of judgment creditors seeking assets held outside the U.S. in foreign banks. See *Motorola Credit Corp. v. Standard Chartered Bank*, 24 N.Y.3d 149 (N.Y. 2014). In *Motorola*, the Court re-affirmed the so-called "separate entity rule," which "prevents a judgment creditor from ordering a garnishee bank operating branches in New York to restrain a judgment debtor's assets held in foreign branches of the bank." *Id.* at 156.

New York courts, however, do not apply the separate entity rule with respect to other enforcement devices under New York C.P.L.R. Article 52. Judgment creditors may therefore seek information regarding accounts and records that can help locate a judgment debtor's assets in foreign banks by way of a subpoena. See *B & M Kingstone, LLC v. Mega Int'l Commercial Bank Co.*, 131 A.D.3d 259 (N.Y. App. Div. 2015) (determining that *Motorola* upheld the validity of the separate entity rule "solely with respect to restraining notices and turnover orders affecting assets located in foreign branch accounts").

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment or award in your jurisdiction?

If a judgment creditor has a choice of forum, it is important to evaluate each state's statutes and case law to determine which is most favourable to the creditor's prospects to have a foreign

judgment recognised and enforced. For example, because Florida is one of a few states that includes "reciprocity" as a permissible ground for non-recognition (as discussed above in question 2.10), a judgment creditor may be advised to seek recognition in another state if the judgment at issue was rendered in a foreign jurisdiction that has a reputation of refusing to recognise and enforce U.S. judgments. It is also important to consider bringing a "turn-over" proceeding in New York, whereby a judgment creditor may seek assets from a judgment debtor that may be located outside of the U.S. but whose assets are held by a financial institution or other third-party subject to personal jurisdiction in New York. Attention should also be given to the different rules regarding property exempt from judgment enforcement.

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Chris Paparella concentrates on commercial litigation and arbitration. He represents clients in all types of business disputes including financial and construction disputes. Mr. Paparella has been ranked by *Chambers USA*, *Chambers Global* and *The Legal 500* as one of the leading international arbitration lawyers in the United States.



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Andrea Engels has advised and represented clients in a variety of international disputes before U.S. state and federal courts and in international arbitrations organised under all the major arbitration rules. Ms. Engels has handled high-stakes cases across sectors, including disputes involving construction and engineering, the energy sector, banking and securities, professional services, and art law.

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