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The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2018

3rd Edition

A practical cross-border insight into the enforcement of foreign judgments

Published by Global Legal Group, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George Print Group
March 2018

ISBN 978-1-911367-99-4
ISSN 2397-1924

Strategic Partners

General Chapters:

Country Question and Answer Chapters:

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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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 does not have a uniform federal law governing the recognition and enforcement of foreign judgments, and it is not a party to any treaty that deals with this subject. Accordingly, the recognition and subsequent enforcement of foreign judgments in the United States is primarily a matter of state statutory and common law. *See* Restatement (Third) of the Foreign Relations Law of the United States § 481 cmt. a (Am. Law Inst. 1987). ("[I]n the absence of a federal statute or treaty…recognition and enforcement of foreign country judgments is a matter of State law.")

The statutory law of the states derives from two model recognition acts promulgated by the National Conference of Commissioners on Uniform State Laws: the 1962 Uniform Money-Judgments Recognition Act; and the 2005 Uniform Foreign-Country Money Judgments Recognition Act. The majority of states and the District of Columbia have adopted some version of these model laws. New York, for example, has enacted the New York Uniform Foreign Money-Judgments Recognition Act, codified in Article 53 of New York's Civil Practice Law and Rules ("CPLR"). These statutes apply only to judgments that grant or deny recovery of a sum of money.

States without a recognition act rely on the common law. In some states, the recognition statute expressly provides that common law principles remain available to support recognition. *See, e.g.*, Del. Code Ann. tit. 10, § 4807 ("This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of [the statute]").

The common law follows the guidelines established by the leading federal case on recognition and enforcement of foreign judgments, *Hilton v. Guyot*, 159 U.S. 113 (1895). In Hilton, the Supreme Court held that the recognition and enforcement of foreign judgments is primarily based on principles of international comity. Accordingly, "where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice", the merits of the case "should not, in an action brought in this country upon the judgment, be tried afresh". *Id*. at 202–03. Many states also look to common law principles reflected in the Restatement (Third) of Foreign Relations Law, which is broader than the Model Acts and not limited to money judgments.

While state courts are courts of general jurisdiction, and are presumed to have subject matter jurisdiction over a case, the constitutional limitations on federal jurisdiction make federal courts "courts of limited jurisdiction". *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Federal courts hear recognition and enforcement actions under either diversity of citizenship jurisdiction, or federal question jurisdiction, with diversity of citizenship jurisdiction being the most commonly invoked jurisdictional ground. The diversity statute, 28 U.S.C. § 1332, provides that district courts have jurisdiction over all civil actions where the matter in controversy exceeds $75,000 and the parties are diverse.

In diversity cases, federal courts apply the recognition and enforcement rules of the state in which the federal court sits. *See Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F. 3d 1199, 1212 (9th Cir. 2006) (*en banc*) (*per curiam*) (observing that, in international diversity cases, "enforceability of judgments of courts of other countries is generally governed by the law of the state in which enforcement is sought"). This means that removal of an enforcement action from state to federal court will ordinarily result in the federal court's application of the same state statute that would have been applied in state court proceedings. Additionally, Rule 64 of the Federal Rules of Civil Procedure requires a federal court to apply state law for remedies involving the seizure of property, which may be essential in an action seeking to collect on a foreign money judgment in a U.S. court.

When a federal court's subject matter jurisdiction is based on a question of federal law, rather than diversity grounds, the courts apply the applicable federal statute (if there is one) or federal common law. For example, the U.S. has acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517 ("New York Convention") and implemented its provisions in Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 201 *et seq*. Section 203 provides that original jurisdiction for "[a]n action or proceeding falling under the [New York] Convention" lies in the United States federal district courts. 9 U.S.C. § 203. No separate proceeding is required to "confirm" a foreign arbitral award under the New York Convention; a creditor need only file a single action to enforce the foreign award under the FAA. See CBF *Industria de Gusa /S/A v. AMCI Holdings, Inc*., 850 F. 3d 58, 72 (2d Cir. 2017).

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

State statutes based on the Model Acts require that a judgment: grant or deny recovery of a sum of money; be final and conclusive between the parties; and be enforceable in the country in which the judgment was entered. *See* 2005 Recognition Act § 3(a) (2); 1962 Recognition Act § 3; Cal. Civ. Proc. Code § 1715(b). *See also Iraq Middle Mkt. Dev. Found. v. Harmoosh*, 848 F.3d 235, 238 (4th Cir. 2017) ("a foreign judgment regarding a sum of money is generally conclusive between the parties so long as it is final, conclusive, and enforceable where rendered") (internal quotation marks omitted). The finality requirement means that intermediate and interlocutory rulings cannot be recognised.

Although the Model Acts and the Restatement do not require reciprocity, i.e., a showing that courts of the originating state would recognise and enforce a judgment entered in the court of a U.S. state, some state statutes make this a requirement. *See, e.g*., Tex. Civ. Prac. & Rem. Code Ann. § 36A.004(c)(9).

Judgments for taxes, fines or other penalties are excluded from the recognition statutes. *See Plata v. Darbun Enters. Inc*., No. D062517, 2014 WL 341667, at *5 (Cal. Ct. App. Jan. 31, 2014) ("A judgment is a penalty even if it awards monetary damages to a private individual if the judgment seeks to redress a public wrong and vindicate the public justice, as opposed to affording a private remedy to a person injured by the wrongful act"). Under the 1962 Recognition Act, courts will also not recognise and enforce judgments "[in] support [of] matrimonial or family matters". 1962 Recognition Act § 1(2). The 2005 Recognition Act expanded this exclusion to cover judgments "for divorce, support, or maintenance, or other judgments rendered in connection with domestic relations". 2005 Recognition Act § 3(b)(3). However, non-monetary judgments, including matrimonial matters, may be recognised under principles of comity, or pursuant to specific statute law. *See, e.g*., Cal. Civ. Proc. Code § 1715(B) (providing that a judgment in connection with domestic relations may be recognised under a savings clause); *Downs v. Yuen*, 748 N.Y.S. 2d 131 (App. Div. 2002) (the New York recognition statute does not bar recognition of a foreign support judgment as a matter of comity). Restatement (Third) of Foreign Relations Law § 481(1) has a broader scope than the Model Acts, and would recognise foreign judgments "establishing or confirming the status of a person, or determining interests in property".

Section 2, cmt. 3 of the 2005 Recognition Act provides that a foreign country judgment "need not take a particular form", and that "any competent government tribunal that issues such a 'judgment' comes within the term 'Court' for purposes this Act". However, the judgment must be from an adjudicative body of the foreign country "and not the result of an alternative dispute mechanism chosen by the parties". Foreign arbitral awards, therefore, are not covered by the Act, but are governed by federal law. On the other hand, a judgment of a foreign court confirming or setting aside an arbitral award is covered by the Act.

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

For the substantive requirements of a judgment, *see supra*, question 2.2.

To have a judgment recognised, Section 6 of the 2005 Recognition Act requires that the judgment holder file a court action against the debtor. This means that the holder may bring a plenary action or raise the matter as a counterclaim, crossclaim or affirmative defence in a pending proceeding. *See, e.g*., Tex. Code Prac. & Rem. Ann. § 36A.006 (recognition can be sought as an original matter by filing an action seeking recognition, or may be raised in a pending action by counterclaim, cross-claim or affirmative defence); Cal. Civ. Proc. Code § 1718(b) (same); D.C. Code Ann. § 15-366(b) (same).

In New York, the holder of the judgment has *three* options: a plenary action (which is often an attachment action pursuant to CPLR § 6201(5)); an expedited summary judgment action pursuant to CPLR § 3213; or filing a counterclaim, cross-claim or asserting an affirmative defence in a current proceeding. The summary procedure is favoured; Section 3213 provides that "[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers *in lieu* of a complaint". The motion papers must contain sufficient evidentiary detail for the plaintiff to establish entitlement to summary judgment, although supplementing the moving papers may be allowed, in the court's discretion. *See* 7B David D. Siegel, *Practice Commentaries*, McKinney's Cons. Laws of N.Y., CPLR C3213:8.

The New York Appellate Division has held that the holder of a foreign country judgment seeking summary relief under § 3213 must: (1) provide a certified copy of the actual judgment; (2) when the judgment was rendered in a foreign language provide a certified English translation of it; (3) unless obvious from the face of the judgment, submit the affidavit of an expert in the law of the jurisdiction that rendered the judgment establishing that the judgment is final, conclusive and enforceable in that jurisdiction; (4) if the expert's affidavit is in a foreign language, provide a certified English translation of it; and (5) if the expert cites a particular foreign law authority to provide the court with copies of those authorities and translated copies. *See Sea Trade Mar. Corp. v. Coutsodontis*, 978 N.Y.S.2d 115, 117–18 (App. Div. 2013).

Note that when a proceeding seeks to enforce a judgment against a sovereign state, it is controlled by the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1604, and the extensive case law developed under the statute. Foreign states are immune from liability, as well as discovery and the burdens of trial, unless one of the statutory exceptions to immunity applies.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

The court must have subject matter jurisdiction (of particular importance in federal court) and in most states there must also be

personal jurisdiction, i.e., the non-resident judgment debtor must have "minimum contacts" with the state that satisfies due process. *See Int'l Shoe Co. v. Wash*., 326 U.S. 310, 316 (1945).

State personal jurisdiction law varies, however, and courts disagree about the due process requirements in recognition actions. In New York, a judgment creditor may seek recognition whether or not the defendant had contacts with the state, or currently has assets within the state against which a judgment could be enforced. *See Lenchyshyn v. Pelko Electric, Inc*., 723 N.Y.S. 2d 285, 291 (App. Div. 2001) (reasoning that in an Article 53 proceeding, "the judgment creditor does not seek any new relief against the judgment debtor, but instead merely asks the court to perform its ministerial function of recognizing the foreign country money judgment"). See also *Beluga Chartering B.V. v. Timber S.A*., 294 S.W. 3d 300 (Tex. App. 2009) (personal jurisdiction not required under Texas statute). *But see Electrolines, Inc. v. Prudential Assurance Co*., 677 N.W. 2d 874, 885 (Mich. Ct. App. (2003) (in case seeking to enforce Liberian judgment against European defendants, "the trial court must possess jurisdiction over the judgment debtor or the judgment debtor's property").

Once converted into a state judgment, a foreign judgment is generally given full faith and credit under Article IV, Section 1 of the U.S. Constitution, and is therefore enforceable as a domestic judgment in any U.S. court. *See, e.g*., CPLR § 5303; Fla. Stat. Ann. § 55.604(5); Cal. Civ. Proc. Code § 1719. Notably, one court declined to give a New York judgment full faith and credit where there was not a showing of personal jurisdiction over the foreign debtor. *See Ahmad Hamad Al Gosaibi & Bros. v. Standard Chartered Bank*, 98 A.3d 998 (D.D.C. 2014).

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

A plaintiff seeking to enforce a foreign judgment within the United States must, as a prerequisite to enforcement, first have the judgment recognised by a domestic court. Recognition of a foreign judgment means that "the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country". 2005 Recognition Act § 4 cmt. 2; *Midbrook Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc*., 874 F. 3d 604, 613 & n. 9 (9th Cir. 2017).

Enforcement means "application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign country judgment". *Millbrook Flowerbulbs*, 874 F. 3d at 613 n.9. A recognised judgment is generally enforceable in any U.S. court under the Constitution's full faith and credit clause. *See* Cal. Civ. Proc. Code § 1719 (a) & (b). Once recognised, the judgment has *res judicata* effect. U.S. courts generally apply U.S. rules of issue preclusion. *See Hurst v. Socialist People's Libyan Arab Jamahiriya*, 474 F. Supp. 2d 19, 32–33 (D.D.C. 2007); *Alfadda v. Fenn*, 966 F. Supp. 1317 (S.D.N.Y. 1997), aff'd, 159 F.3d 41 (2d Cir. 1998). *But see United States v. Kashamu*, 656 F. 3d 679 (7th Cir. 2011) (Posner, J.) (suggesting *in dictum* that the law of the rendering court's foreign jurisdiction may presumptively control the preclusive scope of foreign judgments in U.S. litigation).

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

As already noted, the procedures in each state vary. For the procedures in New York, *see supra para*. 2.3. Delaware law is representative of the law of most states. It provides that "[if] recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment". Del. Code Ann. Tit. 10, § 4809(a). "If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense." *Id*. 4809(b). Once recognised, the foreign-country judgment is "(1) [c]onclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and (2) [e]nforceable in the same manner and to the same extent as a judgment rendered in this State". *Id*. § 4810.

In all jurisdictions, if a party establishes that an appeal from a foreign-country judgment is pending, or will be taken, the court "may stay any proceedings with regard to the foreign country judgment until: (1) the appeal is concluded; (2) the time for appeal expires; or (3) the appellant has had sufficient time to prosecute the appeal and has failed to do so". *See* Tex. Civ. Prac. & Rem. Code Ann. § 36A.008); Cal. Civ. Proc. Code § 1720.

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

Every state statute based on the Model Acts provides both mandatory and discretionary grounds for non-recognition, as does the Restatement (Third) of Foreign Relations Law, and principles of the common law set out in *Hilton v. Guyot*. These grounds can be asserted as affirmative defences in an action on the judgment, or by counterclaim or cross-claim in a pending proceeding between the parties. Section 3(c) of the 2005 Recognition Act provides that "[a] party seeking recognition of a foreign-country judgment has the burden of establishing that this [Act] applies to the foreign-country judgment". Once the threshold requirements are met, the burden shifts to the party opposing recognition to demonstrate a mandatory or discretionary ground for non-recognition. *Id*. § 4(d). In New York, however, "[a] plaintiff seeking enforcement of a foreign country judgment bears the burden of making a *prima facie* showing that the mandatory grounds for nonrecognition do not exist". *Gemstar Canada, Inc. v. George A. Fuller Co*., 6 N.Y.S.3d 552, 554 (App. Div. 2015) (internal quotation marks omitted). "The defendant opposing enforcement bears the burden of proving that a discretionary basis for non-recognition pursuant to CPLR § 5304(b) applies." *Id*.

While state recognition statutes are similar, they may differ on key issues. For example, the Model Recognition Acts and the Restatement do not require reciprocity. Nonetheless, Florida, Idaho, Maine, North Carolina, Ohio and Texas make reciprocity a discretionary ground for recognition while Georgia and Massachusetts make it a mandatory ground. There are disputes as well over the law applicable to questions concerning *the foreign court's* personal jurisdiction. Some courts look to the law of both the foreign jurisdiction and the United States. *See Evans Cabinet Corp. v. Kitchen Int'l, Inc*., 593 F.3d 135 (1st Cir. 2010). Others look to foreign law. *See* Restatement (Third) of Foreign Relations Law § 482 (domestic court must look to foreign law).

New York recognition law provides two mandatory grounds for non-recognition: (1) the judgment was "rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law"; or (2) "the foreign court did not have personal jurisdiction over the defendant". CPLR § 5304.

New York law also provides eight discretionary grounds pursuant to which a New York court "need not" recognise a judgment. CPLR §

5304(b). These include: (1) lack of subject matter jurisdiction; (2) failure to receive notice of the proceedings in the foreign court in sufficient time to allow for defences; (3) the judgment was obtained by fraud; (4) the judgment (or the cause of action or claim for relief) is repugnant to the public policy of the state; (5) the judgment conflicts with another final and conclusive judgment; (6) the proceeding in the foreign country was in violation of an agreement between the parties establishing a process other than a proceeding in a foreign court; (7) in the case of jurisdiction based on personal service, the foreign court was a seriously inconvenient forum for the trial of the action; or (8) the cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the U.S. court determines that the defamation law applied in the foreign court "provided at least as much protection for freedom of speech and press" as would be provided by the U.S. and New York constitutions.

California's statute adds an additional mandatory ground. The statute prohibits recognition when the foreign court lacked subject matter jurisdiction. Cal. Civ. Proc. Code § 1716(b). California law also provides that a state court "shall not recognize" a foreign judgment in seven situations, *id*. § 1716(c)(1), but in a separate section states so that, when considering these Section (c)(1) factors, a court may recognise the foreign judgment in "the unusual case" where there are countervailing considerations that outweigh the reasons for non-recognition. *See* § 1715(c)(2) & Law Revision Comments. Finally, a separate statutory section prohibits recognition of a foreign defamation judgment when that judgment is not recognisable under 28 U.S.C. § 4102 (the federal SPEECH Act). *Id*. § 1716(2)(f).

The mandatory "no impartial court" defence is narrowly construed and has been applied only in situations where the foreign country's court system was not capable of providing a fair trial. *See, e.g., Bank Melli Iran v. Pahlavi*, 58 F.3d 1406 (9th Cir. 1995) (the Iranian judicial system did not provide impartial tribunals); *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014), *aff'd*, 833 F.3d 74 (2d Cir.), *cert. denied*, 137 S. Ct. 2268 (2014) (Ecuadorian judgment unenforceable when judgment creditor bribed and coerced judges and ghostwrote decision); *Bridgeway Corp. v. Citibank*, 45 F.Supp.2d 276 (S.D.N.Y. 1999), aff'd, 201 F. 3d 134 (2d Cir. 2000) (refusing to enforce judgment issued by the Liberian Supreme Court when judiciary was dysfunctional due to civil war).

The public policy defence "measures not simply whether the foreign judgment or cause of action is contrary to our public policy, but whether either is so offensive to our public policy as to be prejudicial to recognized standards of morality and to the general interests of the citizens". *Naoko Ohno v. Yuko Yasuma*, 723 F. 3d 984, 1002 (9th Cir. 2013) (emphasis and internal quotation marks omitted). *See also S.A.R.L. Louis Feraud Int'l v. Viewfinder*, 489 F.3d 474, 479–80 (2d Cir. 2007) ("The public policy inquiry rarely results in refusal to enforce a judgment unless it is inherently vicious, wicked or immoral, and shocking to the prevailing moral sense"). *But see Derr v. Swarek*, 766 F. 3d 430, 437–38 (5th Cir. 2014) (failure of German court to respect purchasers' dismissal with prejudice of their breach of contract claims against seller violated Mississippi public policy).

The 2005 Recognition Act, and state statutes that follow it, deal with due process in two statutory sections. Section 4(b)(1) requires the forum court to deny recognition if the forum court "finds that the entire judicial system in the foreign country…does not provide procedures compatible with the requirements of fundamental fairness". Section 4(c)(8) permits a denial of recognition if the court finds that the specific proceeding in the foreign court "was not compatible with the requirements of fundamental fairness". Both sections have been construed to require only fundamental fairness, not to require the application of American constitutional standards. "If a defendant is afforded notice and an opportunity to be heard in the underlying litigation, the basic requisites of due process are met." *Soc'y of Lloyd's v. Grace*, 718 N.Y.S. 2d 327, 328 (App. Div. 2000).

Finally, the Restatement (Third) of Foreign Relations Law § 482 lists seven grounds upon which a court may refuse to recognise an otherwise valid foreign judgment, including jurisdictional defects, public policy concerns, fraud, an agreement to submit the dispute to another forum, and conflict with another final judgment entitled to recognition; and the Restatement (Second) of Conflict of Laws § 98 cmt. g, (1971) similarly enumerates a number of defences.

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

As noted, the Uniform Acts apply only to money judgments, and do not apply to judgments for taxes, fines or other penalties, or to judgments concerning domestic relations. However, even non-monetary final judgments may be enforced, in appropriate circumstances, under the common law. *See* CPLR § 5307 (expressly stating that Article 53 "does not prevent the recognition of a foreign country judgment in situations not covered by this article").

Several categories of judgments are enforceable under particular federal statutes and treaties. For example, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the Inter-American Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Panama Convention), as implemented by the FAA, require that U.S. courts honour the agreement to arbitrate and the resulting award, with certain exceptions. Parties seeking enforcement of arbitration awards in U.S. courts must demonstrate both personal and subject matter jurisdiction. Article V of the New York Convention and Article 5 of the Panama Convention set forth the grounds on which a domestic court may refuse the recognition of an arbitral award.

The U.S. is a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("ICSID"), which establishes the legal framework for the settlement of investment disputes between foreign investors and sovereign States that have consented to international arbitration pursuant to the Convention. Article 54 imposes on contracting states the obligation to enforce an award issued in an ICSID arbitration "as if it were a final judgment of a court in that State". Courts have adopted varying approaches to the recognition and enforcement of ICSID awards. Some courts permit entry of a judgment on an ICSID award through *ex parte* proceedings. Other courts require award-creditors to pursue a plenary action in compliance with the FSIA's personal jurisdiction, service and venue requirements. *See Micula v. Government of Romania*, No. 15–3109-cv, 2017 WL 4772435 (2d Cir. Oct. 23, 2017); *Mobil Cerro Negro, Ltd. v. Bolivarian Rep. of Venezuela*, 863 F.3d 96 (2d Cir. 2017).

The Securing the Protection of our Enduring and Established Constitutional Heritage Act ("SPEECH"), 28 U.S.C. §§ 4101–4105, controls domestic actions that seek recognition of foreign defamation judgments.

Judgments concerning domestic relations, including child custody, can be recognised and enforced pursuant to several statutes and treaties, including the International Support Enforcement Act, 42 U.S.C. § 659a; the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1993 Hague Convention on

Protection of Children and Cooperation in Respect of Inter Country Adoption; the Uniform Child Custody Jurisdiction and Enforcement Act; and the Uniform Interstate Family Support Act.

2.9 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?

The Model Acts provide that "[a] foreign judgment need not be recognized if the judgment conflicts with another final and conclusive judgment". *See* 1962 Model Act, § 4(b)(4); 2005 Model Act, § 4(c)(4). Many state statutes incorporate this language. *See* CPLR § 5304(b); Tex. Civ. Prac. & Rem. Code § 36.005(b)(4); Cal. Civ. Proc. Code § 1715(2)(d). *See generally Byblos Bank Europe, S.A. v. Sekerbank Turk Anonym Syrketi*, 885 N.E. 2d 191 (N.Y. 2008) (affirming non-recognition of a Belgium judgment which conflicted with an earlier judgment of a Turkish court); *Brosseau v. Ranzau*, 81 S.W.3d 381 (Tex. App. 2002) (Mexican judgment not entitled to recognition because inconsistent with order of U.S. bankruptcy court). There is no fixed rule concerning which judgment gets recognised. *See* Restatement (Third) of Foreign Relations Law, § 482(2)(e) & cmt. g (1987) ("Courts are likely to recognize the later of two inconsistent foreign judgments, but under Subsection 2(e) the court may recognize the earlier judgment or neither of them"). In New York, if two foreign judgments are inconsistent, the later of the two will generally be recognised. *See Koehler v. Bank of Bermuda Ltd*., No. M18–302, 2004 WL 444101, at *17 (S.D.N.Y. Mar. 10, 2004) (endorsing the judgment that was the latest in time). *But see Byblos Bank Europe*, 885 N.E. 2d at 429 (last-in-time rule "need not be mechanically applied").

The effect of local proceedings between the parties varies with the jurisdiction and the facts of the case. A U.S. court can stay the ongoing proceeding until the judgment creditors' claim for recognition and enforcement of a foreign judgment has been adjudicated. Or the foreign country judgment can, in the appropriate ongoing case, be raised by counterclaim, cross-claim or affirmative defence.

2.10 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?

When the foreign court's judgment conflicts with U.S. law, a court may, in the proper circumstances, refuse to recognise the foreign judgment on public policy grounds. For example, in *Telnikoff v. Matusevitch*, 702 A. 2d 230 (Md. 1997), the court refused to enforce an English libel judgment because English defamation law was "contrary...to the policy of freedom of the press underlying Maryland law". *Id*. at 249. As noted above, a party can challenge recognition of a foreign judgment if there is a conflicting "final and conclusive judgment", but it is unclear whether third parties can raise this defence.

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

The mere fact that U.S. law was applied by the foreign court would have no effect on the recognition and enforcement of the foreign judgment. However, "[c]ourts have found a general policy interest in having New York law interpreted by a U.S. court where the parties agreed that New York law would govern their agreement". *David Benrimon Fine Art LLC v. Durazzo*, No. 17 Civ. 6382 (JFK), 2017 WL 4857603 at *3, (S.D.N.Y. Oct. 26, 2017) (citing *Software AG, Inc. v. Consist Software Sols., Inc*., No. 08 civ. 389 (CM) (FM), 2008 WL 563449, at *25 (S.D.N.Y. Feb. 21, 2008), *aff'd*, 323 F. App'x 11 (2d Cir. 2009).

2.12 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, recognition and enforcement is largely a matter of state law, and state law differs on a number of issues. In Florida, Maine, Ohio and Texas, lack of reciprocity is a discretionary ground for non-recognition. *See, e.g., Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1002–04 (5th Cir. 1990) (refusing to recognise an Abu Dhabi judgment because the Texas Recognition Act treats non-reciprocity as a discretionary ground for non-recognition); Fla. Stat. Ann. § 55.605(2)(g). Thus, a foreign litigant must determine if the state in which he wishes to enforce a judgment requires reciprocity, and whether the foreign court in which the litigant obtained the judgment does in fact reciprocate.

There is also a conflict concerning whether a party must meet the minimum contacts test to establish personal jurisdiction over a person or property. New York courts hold that the judgment debtor "need not be subject to personal jurisdiction in New York before the judgment creditor may obtain recognition and enforcement of the foreign country money judgment". *Lenchyshyn v. Pelko Elec., Inc*., 723 N.Y.S. 2d 285, 286 (App. Div. 2001). *See also Abu Dhabi Comm. Bank PJSC v. Saad Trading*, 986 N.Y.S.2d 454 (1st Dep't 2014). Other states require jurisdiction over the judgment debtor or his property. *See Electrolines, Inc. v. Prudential Assurance Co*., 677 N.W.2d 874, 875 (Mich. Ct. App. 2003).

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

Neither the Restatement nor the 1962 Recognition Act addresses the statute of limitations question. The 2005 Recognition Act, however, includes a statute of limitations; it provides that "[a]n action to recognize a foreign-country judgment must be commenced within the earlier of (i) the time during which the foreign-country judgment is effective in the foreign country, or (ii) 15 years from the date that the foreign-country judgment became effective in the foreign country". Some courts have applied the state's general statute of limitations, while some states have their own application limitations period. *See, e.g*., Cal. Civ. Proc. Code § 1721 ("An action to recognize 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").

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 satisfy in order to be recognised and enforceable under the respective regime?

This is not applicable in the U.S. *See supra* section 2.

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 supra* section 2.

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.

This is not applicable in the U.S. *See supra* section 2.

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 be challenged under the special regime? When can such a challenge be made?

This is not applicable in the U.S. *See supra* section 2.

4 Enforcement

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

Under the Federal Rule of Civil Procedure 69(a)(1), "[a] money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies".

State law remedies available to enforce foreign judgments generally include injunctions, notices of pendency, orders of attachment and receivership. In New York, CPLR § 6201(5), governing attachment procedures, is often the vehicle of choice for enforcing a foreign judgment. After the action is brought, the court will rule on whether the foreign judgment can be recognised in New York.

New York also permits "turnover actions" under CPLR § 5225(b). A turnover action is a special proceeding brought by creditors when the person with possession or control of the money or property is not the judgment debtor but a third person, for example, a financial institution with branches in New York. Upon a sufficient showing, courts "shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff". CPLR § 5225(b). New York's "separate entity rule", however, "precludes a judgment creditor from ordering a garnishee bank operating branches in New York to restrain a debtor's assets held in foreign branches of the bank". *Motorola Credit Corp. v. Standard Chartered Bank*, 21 N.E. 2d 223, 225 (N.Y. 2014) (internal quotation marks omitted). The "burden of proof in a turnover proceeding rests with the judgment creditor", but the creditor "is entitled to broad discovery to assist in prosecuting the claims". *Petrocelli v. Petrocelli Elec. Co*., 995 N.Y.S. 2d 5521 (App. Div. 2014).

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? Please provide a brief description.

The courts have been divided as to whether a party may obtain injunctive relief from a U.S. court to prevent the enforcement of a foreign judgment in this country. However, in *Chevron Corp. v. Donziger*, 886 F. Supp. 2d 235, 279 (S.D.N.Y. 2012), a federal district court determined that a foreign judgment had been secured through fraud, and, moreover, that the Ecuadorian decisions at issue were not entitled to recognition in the U.S. because that country's judicial system failed to provide impartial tribunals or procedures. The district court entered an injunction barring plaintiffs from seeking to have the judgment recognised or enforced in the U.S. and established a constructive trust. The court of appeals affirmed. *See Chevron v. Donziger*, 833 F. 3d 74, 151 (2d Cir. 2016) ("we see no abuse of discretion in the equitable *in personam* relief granted by the district court").

On June 19, 2017, the Supreme Court declined to review the ruling. See 137 S. Ct. 2268 (2017). The decision, therefore, is now final, and has set a precedent for injunctive relief barring recognition and enforcement, in similar cases.

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 in your jurisdiction?

The position of the New York courts, that the plaintiff need not establish personal jurisdiction in order to enforce a foreign judgment, *see Abu Dhabi Commercial Bank*, 986 N.Y.S. 2d 454, has given an interesting twist to the enforcement of foreign arbitral awards. In *Passport Special Opportunities Master Fund, L.P. v. ARY Commc'ns, Ltd*., 26 N.Y.S. 3d 725 (Sup. Ct. Nassau Cty. 2015), Passport secured an arbitration award in a Singapore court; the award was subsequently confirmed by the Singapore High Court on appeal. Passport had, in the meantime, filed an enforcement action in the federal district court in New York, but withdrew that action after confirmation. It then filed a new action in New York state court, seeking recognition of the Singapore judgment confirming the arbitral award. The trial court held that Passport need not establish personal jurisdiction to enforce the foreign judgment confirming the arbitral award, and Passport could attach the debtor's assets post-confirmation. Enforcing the judgment, rather than the arbitral award, also permitted Passport to take advantage of New York's 20 year statute of limitation for enforcing judgments, CPLR § 211(b), rather than the FAA's one-year limitations period 9 U.S.C. § 9, or the New York Convention's three year statute of limitations.

Finally, a corporation seeking to have a foreign judgment recognised and enforced in a New York court should consult New York Business Corporation Law § 1312(a). That statute provides that, without a certificate of authority from the New York Secretary of State, a foreign corporation "shall not maintain any action or special proceeding in this state". N.Y. Bus. Corp. Law § 1312(a). There is a presumption that, in an action brought by a foreign corporation lacking a certificate of authority, the corporation is doing business in its state of incorporation, rather than in New York. The party invoking Section 1312, accordingly, has the burden of establishing that the corporation's business activities in New York were not just casual or occasional but systemic and regular. *See Gemstar Canada, Inc. v. George A. Fuller Co*., 6 N.Y.S.3d 552, 554 (App. Div. 2015).

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