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2022 WESTERN REGION CONFERENCE





Recognition and Enforcement of Foreign Judgments In The United States

Treaties

- The US is not a Signatory to any Convention or Treaty that Requires recognition or enforcement of Non-US Court Judgments
- The US is a Signatory to Multilateral conventions Regarding US Court Enforcement of Arbitration 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)

Revised Uniform Enforcement of Foreign Judgments Act

- Drafted by National Conference Of Commissioners on Uniform State Laws (1964)
- Applies to Any Judgment, Decree, or Order of a Court of the United States which is Entitled to Full Faith and Credit in this State
- Updated 1948 Statute to Conform with Enforcement of the Inter-District enforcement of the Judgments of Federal District Courts (28 U.S.C. § 1963)

The Uniform Foreign Money Judgments Act

Drafted by National Conference Of Commissioners on Uniform State Laws (1962)

Recognized that Reciprocity was an Issue which had previously caused Judgments rendered in a State in the US to not be recognized in Foreign Countries

The Act Does not prescribe a Uniform Enforcement procedure

The Act Provides That a Judgment entitled to Recognition will be enforceable in the same manner as the Judgment of a Court of a Sister State that is entitled to full faith and credit

A Mere Difference in the Procedural System is Not a basis for non-recognition – A serious injustice must be involved (*Hilton v. Guyot*, 159 U.S. 113, 205 (1895)).

Foreign Civil Judgments for A Fixed Sum of Money, Excluding fines, penalties or taxes

The Uniform Foreign Country Money Judgments Act

- Drafted by National Conference Of Commissioners on Uniform State Laws (2005)
- Update to the Uniform Foreign Money Judgments Act
- Added the word “Country” to ensure that Courts differentiated between Judgements from Other States (Recognition of Sister State Judgments) and Foreign Countries
- Adds a Statute of Limitations(Section 9); Procedure For Recognition of Foreign Country Judgment (Section 6)
- **Enacted by 19 US States and District of Columbia (Including California)**

Full Faith And Credit Clause of the US Constitution

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Application

- Foreign Country Act only applies to money judgments.

Section 3:

(a): Except as otherwise provided in subsection (b), this [act] applies to a foreign country judgment to the extent that the judgment:

- (1) grants or denies recovery of a sum of money; and
- (2) under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This [act] does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

- (1) a judgment for taxes;
- (2) a fine or other penalty; or
- (3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

Compare: Judgments from other states can be against personal property.

Court Interpretation

- Is a judgment under the Act a new judgment or an extension of the old judgment? (So when does it expire?)
 - *Nielson v Schmoke* – North Carolina App. 2021 (New judgment with new expiration date).
 - Not the way Washington does it – uses originating state’s expiration date
- Act is not exclusive remedy
 - Creditor can proceed under uniform act and also file a new lawsuit under the old common law system. *Berg v Ciampa* - Mass. App. 2021.
- Court struck down as unconstitutional a provision in state’s enactment of uniform act that shifted burden to creditor to prove that judgment is entitled to full faith and credit.
(*Law Firm of Erickson v Boykin* – South Carolina Supreme Court 2009).
(Note: Refer to 3(c): A party seeking recognition of a foreign-country judgment has the burden of establishing that this [act] applies to the foreign-country judgment.

Appeals

- Don't have to wait until matter in the original jurisdiction has exhausted all appeals, But:
SECTION 8. Stay Of Proceedings Pending Appeal Of Foreign Country Judgment.
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 the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Arbitration

- What about Arbitration awards?

There are two Conventions to which the US Is Signatory:

- The New York Convention

Treaty Written June 10, 1958

United States Ratified September 30, 1970

- The Panama Convention

Treaty Written January 30, 1975

United States Ratified November 10, 1986

The New York Convention

- Article III:

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

(Note: Also See Articles IV and V For More Specifics)

The Panama Convention

- **Article 4:**

An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.

Practical Considerations

- Cannot use the Act to pre-emptively invalidate a foreign judgment.
 - *Chevron Corp v Naranjo* – 667 F.3d 232 (2nd Cir. 2012)
- Where can you domesticate a judgment?
 - Minimum-contacts test (basically long-arm jurisdiction test)
- How do you value a judgment that was entered in a different currency?
 - Breach-day rule vs. judgment-day rule vs. conversion-day rule.

Agency's Role

What should Agencies do to help facilitate the domestication of foreign judgments?

Remedies

- Once the Judgment is Domesticated the same remedies to enforcement are available, including:
 - Wage Garnishment
 - Levy
 - Lien

Defenses

- Generally, The Request to Have a Court Recognize a Foreign Judgment Judgement is not an invitation to re-litigate the Case.

However, Defendants can bring up, as Defenses, the Issues in the applicable Laws. **For Example:**

Uniform Foreign Country Money Judgments Recognition Act: :

- To be recognized, The Judgment Must be For A Sum on Money, not including Fines, Penalties or Taxes (Sec. 3)
- To be recognized, The Judgment must not A Domestic Relations Judgment (Sec. 3)
- The Judgment may not be recognized If the Judgment was rendered under a Judicial System that does not provide Impartial Tribunals or Procedures compatible with Due Process (Sec. 4).

Defenses, Cont. (2).

- Under The UN Convention On the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention):

Article V: Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case

Defenses Cont. 3

- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Conclusion

- Full faith and credit clause makes domesticating foreign state US judgments easier than foreign country judgments
- Reciprocity original concern – now: integrity of foreign tribunal
- The party attempting to have the Judgment recognized needs Information regarding the Court, Case and Tribunal or Arbitration
- It may be more straight-forward to domesticate an Arbitration Award as the Conventions explicitly allow it