

Enforcement of Foreign Judgments

Fundamental Principles [USA - Federal]

2020



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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION
(CIVIL AND COMMERCIAL MATTERS)**

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer:

Yes.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer:

Some version of The Uniform Foreign-Country Money Judgments Recognition Act (“UFCMJRA”) has been adopted by 33 States within the United States of America, as well as in the District of Columbia and the Virgin Islands: Alabama, Alaska, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, and Washington. Of these states, 23 have adopted the 2005 version of the UFCMJRA, which largely follows the 1962 UFCMJRA with the exception of some changes, noted below and throughout each state’s description.

States that have not adopted any version of the UFCMJRA include: New Hampshire, Vermont, Rhode Island, West Virginia, South Carolina, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, Wisconsin, South Dakota, Nebraska, Kansas, Wyoming, Utah and Arizona.

C. Special Rules: European Union

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer:

Not applicable.

2. Does the European Union have a special procedure to enforce court judgments coming its member states?

Answer:

Not applicable.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer:

The average duration of a proceeding under the UFCMJRA will vary by individual state and will depend on whether the proceeding is contested or not. The duration of a proceeding under UFCMJRA will also depend on whether a stay is granted on the grounds that the foreign judgment, the enforcement of which is being sought, is subject to a pending appeal in the jurisdiction of origin. An uncontested proceeding would be a summary matter that could be complete within as few as 60 days, depending on the jurisdiction. Contested proceedings would be subject to typical timelines for litigated court cases, meaning that they could be resolved in the trial court within anywhere from 6 months to 2 years, depending on the jurisdiction.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer:

As a starting point, the UFCMJRA applies to judgments rendered by a court of a foreign country. Pursuant to the UFCMJRA § 2, “foreign country” is defined as a government other than: (A) the United States; (B) a state, district, commonwealth, territory, or insular possession of the United States; or (C) any other government with regard to which the decision in the state court as to whether to recognize a judgment of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

UFCMJRA will apply to such foreign-country judgments provided they grant or deny recovery of a sum of money and, under the law of the foreign country where rendered, are final, conclusive, and enforceable. UFCMJRA § 3.

Even where such initial prerequisites are met, the UFCMJRA permits courts to deny recognition of a foreign-country judgment based on various grounds. To that end, the UFCMJRA divides the grounds for nonrecognition into mandatory and

discretionary categories. For States that have enacted the UFCMJRA, a foreign judgment will not be enforced if one of the following circumstances of mandatory nonrecognition can be shown (barring a modification in the standard UFCMJRA language by the State in question):

1. 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;
2. The foreign court did not have personal jurisdiction over the defendant; or
3. The foreign court did not have jurisdiction over the subject matter.

Under the UFCMJRA's permissive grounds for nonrecognition, a court may, through its discretion, deny recognition of 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 the State in which the judgment is sought to be enforced 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 (e.g., a mandatory arbitration provision);
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.

The UFCMJRA also addresses the burden of proof for nonrecognition. As such, the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the above grounds for nonrecognition exists. UFCMJRA § 4(d).

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer:

Court costs will vary by jurisdiction, but in most cases are a flat fee that is typically not more than a few hundred dollars (U.S.). Barring a full-blown contested litigation over the enforceability of the foreign judgment, there should be minimal—if any—expenses associated with a proceeding to enforce a foreign judgment. In a contested litigation, expenses could be considerable (into the tens of thousands of dollars (U.S.)), and could include discovery and deposition costs and, potentially, expert witness fees.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer:

States that have enacted the UFCMJRA generally impose a statute of limitations consistent with the UFCMJRA's § 9, which states that an 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. However, individual State laws may impose various time limits on the enforcement of a judgment.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer:

Under the UFCMJRA, a judgment must “grant[] or den[y] recovery of a sum of money” and be “final, conclusive, and enforceable” under the law of the foreign country where rendered in order to be enforceable pursuant to the UFCMJRA. However, a judgment may be enforceable under the UFCMJRA even though an appeal therefrom is pending, or it is subject to appeal, unless a stay is granted by the State court in the enforcement proceeding, under the terms of the UFCMJRA regarding the granting of such stays.

Accordingly, if a party shows 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.” UFCMJRA § 8.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?

Answer:

In states that follow the UFCMJRA, the party seeking recognition of a foreign-country judgment bears the burden of proof in establishing that the state’s foreign-country judgments recognition act applies to the foreign-country judgment at issue. UFCMJRA § 3(c).

Under the UFCMJRA, the foreign court judgment must grant or deny a sum of money, other than for taxes, a fine or other penalty, or for a judgment for divorce, support, or maintenance or other judgment rendered in connection with domestic relations. UFCMJRA § 3(b).

The foreign court judgment must also be “final, conclusive, and enforceable” under the law of the foreign country where rendered.

In addition, the foreign court judgment must not have been:

1. Rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
2. Rendered by a court that lacked personal jurisdiction over the defendant;
3. Rendered by a court that lacked jurisdiction over the subject matter;
4. Rendered against a defendant that did not receive notice of the proceedings in sufficient time to enable him to defend;
5. Obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
6. Based on a cause of action or claim for relief that is repugnant to the public policy of the State in which the judgment is sought to be enforced or of the United States;
7. Rendered while conflicting with another final and conclusive judgment;

8. The result of a proceeding that was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than proceeding in court (e.g., a mandatory arbitration provision); or

9. The product of a proceeding where personal jurisdiction over the defendant was based only upon personal service and the foreign court was a seriously inconvenient forum for the trial of the action.

10. Rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

11. Obtained through a specific proceeding in the foreign court leading to the judgment that was not compatible with the requirements of due process of law.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer:

All States have filing fees for cases that are paid by the party initiating the case. They are typically a flat fee that is not more than a few hundred dollars (U.S.).

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer:

Under the UFCMJRA § 6, 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 judgment. Additionally, if recognition of a foreign judgment is sought “in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.” UFCMJRA § 6.

However, individual States may have additional requirements.

IV. PROCEDURE

A. Competent court

1. Which Court or courts are competent to decide an enforcement application?

Answer:

The UFCMJRA permits enforcement of a foreign judgment by State or Federal courts, however an enforcement action filed in a State court

involving parties that are not both citizens of that State can be removed by the defendant to Federal court should the defendant so elect. Typically, a party seeking to enforce a foreign judgment would file the enforcement action in a court (whether State court or Federal court) located in a State where the defendant is subject to personal jurisdiction and has sufficient property that, if seized and sold at auction, would satisfy the judgment. In any event, if an action to enforce a foreign judgment is brought in a court that does not have personal jurisdiction over the defendant, the action will be dismissed. A party is generally subject to personal jurisdiction in any State where that party is a citizen. Under Federal law, a corporation is generally deemed to be a citizen of any state in which it has been incorporated, as well as in the State in which it has its principal place of business.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer:

The UFCMJRA does not expressly mandate that any information be contained in a Complaint or other pleading to enforce a foreign judgment. Additionally, in states that follow the UFCMJRA, the party resisting recognition of a foreign-country judgment bears the burden of establishing that a ground for nonrecognition exists. However, as a practical matter, in order to avoid dismissal of such a Complaint or other pleading it should include the following averments:

1. The judgment in question is a judgment of a foreign country granting (or denying) recovery of a sum of money and is not a judgment for taxes, a fine or other penalty, or a judgment for divorce, support, or maintenance or other judgment rendered in connection with domestic relations;
2. The foreign judgment is final, conclusive, and enforceable where rendered;
3. The foreign court judgment was not:
 - a. Rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
 - b. Rendered by a court that lacked personal jurisdiction over the defendant;
 - c. Rendered by a court that lacked jurisdiction over the subject matter;

- d. Rendered against a defendant that did not receive notice of the proceedings in sufficient time to enable him to defend;
- e. Obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
- f. Based on a cause of action or claim for relief that is repugnant to the public policy of the State in which the judgment is sought to be enforced or of the United States;
- g. Rendered while conflicting with another final and conclusive judgment;
- h. The result of a proceeding that was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than proceeding in that foreign court (e.g., a mandatory arbitration provision);
- i. The product of a proceeding where personal jurisdiction over the defendant was based only upon personal service and the foreign court was a seriously inconvenient forum for the trial of the action;
- j. Rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
- k. Obtained through a specific proceeding in the foreign court leading to the judgment that was not compatible with the requirements of due process of law.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer:

The UFCMJRA does not expressly mandate that any documents be attached to a Complaint or other pleading to enforce a foreign judgment. However, as a practical matter, it would be advisable to attach a copy of the final order setting forth the judgment the enforcement of which is being sought.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer:

The UFCMJRA includes a section that addresses the procedure for recognition of foreign-country judgments. UFCMJRA § 6. Under the UFCMJRA, 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 judgment. Additionally, if recognition of a foreign judgment is sought “in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.” UFCMJRA § 6.

The UFCMJRA expressly allocates the burden of proof with regard to establishing whether a foreign judgment falls within the scope of the UFCMJRA. Accordingly, a party seeking recognition of a foreign-country judgment in a State court has the burden of establishing that the individual State’s act applies to the foreign-country judgment. UFCMJRA § 3(c). A party resisting recognition of a foreign judgment has the burden of establishing that a ground for nonrecognition exists. UFCMJRA § 4(d).

Where a State court, proceeding under an action for recognition of a foreign judgment, finds that the foreign judgment is entitled to recognition, then, “to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is: (1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in [the State in which the court sits] would be conclusive; and (2) enforceable in the same manner and to the same extent as a judgment rendered in [the State in which the court sits].” UFCMJRA § 7.

The UFCMJRA does not set forth any procedural phases aside from the above-mentioned provisions. In States that have not enacted the UFCMJRA or vary in their statutory provisions, procedure will be governed by the particular court in which the enforcement proceeding is brought.

As a general matter, U.S. litigation proceedings, including actions to enforce foreign judgments, are initiated by the filing of a Complaint setting forth the basis for the action and the claim(s) for relief. A copy of that Complaint must then be served on the defendant in accordance with the service requirements of the jurisdiction in question. Once a defendant is served with the Complaint, the defendant will have a specific period of time (20 days in Federal court and some State courts, 30 days in others State courts) within which to file a responsive pleading. That responsive pleading typically takes the form of either an Answer to the Complaint, or a Motion to Dismiss the Complaint. If a defendant’s Motion to Dismiss is granted, the proceeding is over. If such a Motion is denied, the defendant will have to file an Answer to the Complaint. If a defendant fails to Answer the Complaint, the court will enter judgment against the defendant (usually after a motion by the plaintiff for entry of judgment). Uncontested proceedings to enforce foreign judgments are likely to be resolved at this stage.

After the defendant files an Answer to the Complaint, the parties are entitled to engage in discovery, which typically takes the form of document requests

(and the production of requested documents), interrogatories (and responses thereto) and depositions of witnesses.

At any point following the filing by the defendant of an Answer to the Complaint, but typically following the completion of the discovery period, either party (or both parties) may file a Motion for Summary Judgment, asserting that (1) there are no material facts in dispute and (2) under the undisputed facts, the moving party is entitled to judgment in its favor. If the court grants such a Motion, the proceeding is over. Most contested proceedings to enforce foreign judgments are likely to be resolved at the Summary Judgment stage.

If the court determines that there are material facts in dispute, the court will deny the Motion(s) to Dismiss and schedule the case for trial. Where either party has made a Jury Demand in its initial pleading (Complaint or Answer), and provided that the subject matter in question is appropriate, the trial of the case will take place before a jury, which is empowered to determine all disputed facts. In a jury trial, the judge must determine the law to be applied to the case. In a bench trial, the judge will make both the legal determinations and the factual determinations. At the close of a jury trial, the jury will be instructed by the judge regarding the law and then retire to deliberate and reach a verdict. If the court determines that there are no legal defects to a jury's verdict, that verdict will be reduced by the judge to a judgment. After a bench trial, a judge simply issues a ruling together with a judgment. The judgment may be appealed by either party, but is enforceable by the prevailing party notwithstanding that it has been appealed (unless a court has stayed enforcement of the judgment pending appeal).

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer:

Yes.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer:

Yes. Under the UFCMJRA, the party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition exists. A defendant may oppose the effort to enforce enforcement of a foreign court judgment on any of the following grounds:

1. The foreign court judgment does not grant or deny a sum of money.
2. The foreign court judgment grants or denies a sum of money for taxes, a fine or other penalty, or is a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.
3. The foreign court judgment is not final under the law of the foreign country where rendered.
4. The foreign court judgment is not conclusive under the law of the foreign country where rendered.
5. The foreign court judgment is not enforceable where rendered.
6. The foreign court judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
7. The foreign court judgment was rendered by a court that lacked personal jurisdiction over the defendant.
8. The foreign court judgment was rendered by a court that lacked jurisdiction over the subject matter.
9. The foreign court judgment was rendered against a defendant that did not receive notice of the proceedings in sufficient time to enable him to defend.
10. The foreign court judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.
11. The foreign court judgment was based on a cause of action or claim for relief that is repugnant to the public policy of the State in which the judgment is sought to be enforced or of the United States.
12. The foreign court judgment conflicts with another final and conclusive judgment.
13. The foreign court judgment was the result of a proceeding that was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than proceeding in court (e.g., a mandatory arbitration provision).
14. The foreign court judgment was the product of a proceeding where personal jurisdiction over the defendant was based only upon personal service and the foreign court was a seriously inconvenient forum for the trial of the action.

15. The foreign court judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

16. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

In most states that have enacted the UFCMJRA, numbers 1-8 above constitute mandatory grounds for nonrecognition, under which a court has no discretion in deciding whether to recognize a foreign court judgment. Numbers 9-16 are generally provided as discretionary grounds upon which a court may decide, using its discretion, whether or not to recognize a foreign court judgment.

A defendant in such a proceeding can also raise various procedural deficiencies, such as lack of proper service of process, lack of personal jurisdiction, lack of subject matter jurisdiction, and so forth.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer:

Yes. The UFCMJRA does not address rights to appeal a decision to recognize/enforce a foreign court judgment, so the right of appeal will be governed by State or Federal court procedure (depending on what court issued the enforcement decision) and the substantive law of the individual State in question. Under standard court rules, appeals of such decisions are permitted.

2. Can this appeal suspend the enforcement?

Answer:

Yes, under some circumstances. The UFCMJRA does not address the question of whether enforcement can be suspended pending appeal, so the ability to suspend enforcement of a foreign court judgment will depend on the procedure of the State or Federal court system in which the case is pending, and the substantive law of the individual State in question. The general rule throughout the U.S., in both Federal and State courts, is that an appeal does not automatically suspend enforcement, but the party taking the appeal can post a bond with the court in an amount set by court rules in order to stay the judgment while the appeal is pending.

G. Recovery of judicial costs and expenses

- 1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

Answer:

The UFCMJRA does not provide for, or otherwise address, fee-shifting or cost-shifting, so the question of fee-shifting will depend on the procedure of the State or Federal court system in which the case is pending, and the substantive law of the individual State in question. The general rule throughout the U.S., in both Federal and State courts, is that each party bears its own costs and fees (although contract-based fee-shifting provisions between parties of relatively equal bargaining power will typically be enforced).

V. RECOVERY OF THE DEBT

A. Means of Enforcement

- 1. What types of assets are subject to enforcement of the court's judgment?**

Answer:

The UFCMJRA does not provide for, or otherwise address, the question of which assets are subject to enforcement of a foreign court judgment, so this issue will be governed by the substantive law of the individual State in question (and, for a bankrupt defendant, potentially by Federal bankruptcy law).

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer:

Nothing to mention.

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