

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES
February 13, 2006

RECOMMENDATION

RESOLVED, That the American Bar Association approve the Uniform Foreign-Country 1
Money Judgments Recognition Act, promulgated by the National Conference of Commissioners 2
on Uniform State Laws in 2005 as an appropriate Act for those States desiring to adopt the 3
specific substantive law suggested therein. 4

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

REPORT

In 1962, the Uniform Law Commissioners promulgated the Uniform Foreign Money-Judgments Recognition Act. It is a companion to the 1948 (amended in 1962) Uniform Enforcement of Foreign Judgments Act. In spite of the similarities in titles, these acts deal with quite different problems of judgment enforcement. The Enforcement of Foreign Judgments Act provides for enforcement of a state court judgment in another state to implement the Full Faith and Credit clause of the U.S. Constitution. The Foreign Money-Judgments Recognition Act provided for enforcement of foreign country judgments in a state court in the United States. The 1962 Uniform Foreign Money-Judgments Recognition act has been enacted in 32 states.

The increase in international trade in the United States has also meant more litigation in the interstate context. This means more judgments to be enforced from country to country. There is a strong need for uniformity between states with respect to the law governing foreign country money-judgments. If foreign country judgments are not enforced appropriately and uniformly, it may make enforcement of the judgments of American courts more difficult in foreign country courts. To meet the increased needs for enforcement of foreign country money-judgments, the Uniform Law Commissioners have promulgated a revision of the 1962 Uniform Act with the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA).

The first step towards enforcement is recognition of the foreign country judgment. The recognition occurs in a state court when an appropriate action is filed for the purpose. If the judgment meets the statutory standards, the state court will recognize it. It then may be enforced as if it is a judgment of another state of the United States. Enforcement may then proceed, which means the judgment creditor may proceed against the property of the judgment debtor to satisfy the judgment amount.

First, it must be shown that the judgment is conclusive, final and enforceable in the country of origin. Certain money judgments are excluded, such as judgments on taxes, fines or criminal-like penalties and judgments relating to domestic relations. Domestic relations judgments are enforced under other statutes, already existing in every state. A foreign-country judgment must not be recognized if it comes from a court system that is not impartial or that dishonors due process, or there is no personal jurisdiction over the defendant or over the subject matter of the litigation. There are a number of grounds that may make a U.S. court deny recognition, i.e., the defendant did not receive notice of the proceeding or the claim is repugnant to American public policy. A final, conclusive judgment enforceable in the country of origin, if it is not excluded for one of the enumerated reasons, must be recognized and enforced. The 1962 Act and the 2005 Act generally operate the same.

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The primary differences between the 1962 and the 2005 Uniform Acts are as follows:

1. The 2005 Act makes it clear that a judgment entitled to full faith and credit under the U.S. Constitution is not enforceable under this Act. This clarifies the relationship between the Foreign-Country Money Judgments Act and the Enforcement of Foreign Judgments Act. Recognition by a court is a different procedure than enforcement of a sister state judgment from within the United States.
2. The 2005 Act expressly provides that a party seeking recognition of a foreign judgment has the burden to prove that the judgment is subject to the Uniform Act. Burden of proof was not addressed in the 1962 Act.
3. Conversely, the 2005 Act imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it. Again, burden of proof is not addressed in the 1962 Act.
4. The 2005 Act addresses the specific procedure for seeking enforcement. If recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition. If recognition is sought in a pending action, it may be filed as a counter-claim, cross-claim or affirmative defense in the pending action. The 1962 Act does not address the procedure to obtain recognition at all, leaving that to other state law.
5. The 2005 Act provides a statute of limitations on enforcement of a foreign-country judgment. If the judgment cannot be enforced any longer in the country of origin, it may not be enforced in a court of an enacting state. If there is no limitation on enforcement in the country of origin, the judgment becomes unenforceable in an enacting state after 15 years from the time the judgment is effective in the country of origin.

These are the principal advances of the 2005 Act over the 1962 Act. The 2005 Act is not a radically new act. It builds upon the tried principles of the 1962 Act in a necessary upgrade for the 21st Century. It should be enacted in every state as soon as possible. If substantial uniformity is not gained within the foreseeable future, Congress may preempt the recognition and enforcement law.

Full text of the final act and all prior drafts is available at www.nccusl.org.

Respectfully submitted,
Howard J. Swibel, President
The National Conference of Commissioners on Uniform State Laws

February 2006

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: John M. McCabe, Legal Counsel

1. Summary of Recommendation(s).

The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Foreign-Country Money Judgments Recognition Act, by the ABA House of Delegates. The Uniform Foreign-Country Money Judgments Recognition Act has been approved by the National Conference in 2005.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws approved it in July, 2005.

3. Has this or a similar recommendation been submitted to the House or Board previously?

There is an original Uniform Foreign Money Judgments Recognition Act that the National Conference promulgated in 1962. It has been enacted in 32 states. The 2005 Act is a revision of this earlier act.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None known.

5. What urgency exists which requires action at this meeting of the House?

After a Uniform Act is approved by the National Conference, Commissioners work for adoption of the proposal by the States. Legislatures are urged to adopt Uniform Acts exactly as written, to "promote uniformity in law among the several States." Approval of the Uniform Foreign-Country Money Judgments Recognition Act at the mid-year meeting in February 2006 is desired to encourage swift enactment of the revision in the state legislatures.

6. Status of Legislation. (If applicable.)

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None.

7. Cost to the Association. (Both direct and indirect costs.)

Not applicable.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. Also, the work of the Drafting Committee is available at www.nccusl.org, the National Conference website.

The ABA Advisor was Elizabeth M. Bohn.

10. Contact Person. (Prior to the meeting.)

John M. McCabe, Legal Counsel, National Conference of Commissioners on Uniform State Laws, 211 E. Ontario, Suite 1300, Chicago, IL 60611, 312/915-0195.

11. Contact Person. (Who will present the report to the House.)

Howard J. Swibel, President, National Conference of Commissioners on Uniform State Laws, Arnstein and Lehr, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606

12. Contact Person Regarding Amendments to This Recommendation.

Same as 10.

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EXECUTIVE SUMMARY

1. Summary of the Recommendation.

That the ABA approve the Uniform Foreign-Country Money Judgments Recognition Act as an appropriate “Act for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses.

This Act updates the rules for recognition and enforcement of foreign-country money judgments that were initially established in 1962. The Act is timely because of the enhanced importance of international trade. Recognition of American judgments in foreign countries is enhanced with appropriate rules for recognizing foreign-country judgments in American courts.

3. Please explain how the proposed policy position will address the issue.

The Act has appropriate rules to implement the objective stated above.

4. Summary of any minority views or opposition which have been identified.

No opposition is known to exist.