UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

March 2005 Meeting Draft

With Prefatory and Reporter’s Notes

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UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

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<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREFATORY NOTE</td>
<td>1</td>
</tr>
<tr>
<td>SECTION 1. SHORT TITLE</td>
<td>2</td>
</tr>
<tr>
<td>SECTION 2. DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>SECTION 3. SCOPE OF THE ACT</td>
<td>5</td>
</tr>
<tr>
<td>SECTION 4. STANDARDS FOR RECOGNITION OF FOREIGN COUNTRY JUDGMENT</td>
<td>7</td>
</tr>
<tr>
<td>SECTION 5. PERSONAL JURISDICTION</td>
<td>12</td>
</tr>
<tr>
<td>SECTION 6. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT UNDER THIS [ACT]</td>
<td>13</td>
</tr>
<tr>
<td>SECTION 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT</td>
<td>17</td>
</tr>
<tr>
<td>SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT</td>
<td>18</td>
</tr>
<tr>
<td>SECTION 9. TIME IN WHICH TO COMMENCE AN ACTION</td>
<td>19</td>
</tr>
<tr>
<td>SECTION 10. SAVING CLAUSE</td>
<td>20</td>
</tr>
<tr>
<td>SECTION 11. UNIFORMITY OF INTERPRETATION</td>
<td>20</td>
</tr>
<tr>
<td>SECTION 12. REPEAL</td>
<td>21</td>
</tr>
<tr>
<td>SECTION 13. EFFECTIVE DATE</td>
<td>21</td>
</tr>
<tr>
<td>SECTION 14. RECIPROCITY</td>
<td>21</td>
</tr>
</tbody>
</table>
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

PREFATORY NOTE

The National Conference of Commissioners on Uniform State Laws promulgated the current Uniform Foreign Money-Judgments Recognition Act in 1962. The Act codified the most prevalent common law rules with regard to the recognition of money judgments rendered in other countries. The hope was that codification by a state of its rules on the recognition of foreign country money judgments, by satisfying reciprocity concerns of foreign courts, would make it more likely that money judgments rendered in that state would be recognized in other countries. Towards this end, the Act sets out the circumstances in which the courts in states that have adopted the Act must recognize foreign country money judgments. It delineates a minimum of foreign country judgments that must be recognized by the courts of adopting states, leaving those courts free to give recognition to other foreign country judgments not covered by the Act under principles of comity or otherwise. The Act, however, does not establish a procedure for either recognition or enforcement of foreign country money judgments; it merely sets out the standards under which those judgments will be recognized.

In June 2003, a Study Committee appointed by NCCUSL to review the current Act issued a Study Committee Report regarding possible amendment of the Act. That Report found that the Act had in large part been successful in carrying out its purpose of establishing clear standards under which state courts will enforce foreign country money judgments. The Report also concluded, however, that there had been a sufficient number of interpretative issues raised by the current Act to warrant a revision of the Act limited to clarification of those issues. The current Drafting Committee was appointed in January 2004. Its charge is “to draft amendments to the Uniform Foreign Money-Judgments Recognition Act, with the scope of the project limited to those issues necessary to correct problems created by the current Act and its interpretation by the courts.”

The goal of this revision, therefore, is not to change the basic rules or approach of the current Act, but rather to clarify its application in situations in which issues have arisen. Among the more significant issues identified by the Study Report which are addressed in this Revised Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing application of the Act; (3) the need to provide a specific procedure by which recognition of a foreign country money judgment under the Act must be sought; (4) the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law; (5) the need to expressly allocate the burden of proof with regard to the grounds for denying recognition; (6) the need to establish a statute of limitations for certain recognition actions; and (7) the need to revisit the issue of whether a reciprocity requirement should be included in the Act in light of nonuniform state enactments that have included such a requirement.
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

SECTION 1. SHORT TITLE. This [act] may be cited as the [Recognition Act of 200_].

Reporter’s Notes

This section is an updated version of Section 9 of the current Act. It has been moved from Section 11 of the October 2004 Draft to Section 1 of this Draft in accordance with current Conference practice.

[As discussed at the October meeting, the Drafting Committee needs to decide upon a short title for the Act. The Reporter’s suggestion is in brackets in the text.]

SECTION 2. DEFINITIONS. As used in this [act]:

(a) “Foreign country” means any governmental unit other than

(i) the United States;

(ii) a state, district, commonwealth, territory or insular possession of the United States; or

(iii) any other governmental unit with regard to which the decision in this state as to whether to recognize the judgments of that governmental unit’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) “Foreign-country judgment” means a judgment of a court of a foreign country.

Reporter’s Notes

The defined terms “foreign state” and “foreign judgment” in the current Act have been changed to “foreign country” and “foreign-country judgment” in order to make it clear that the Act does not apply to recognition of sister-state judgments. Some courts have noted that the “foreign state” and “foreign judgment” definitions have caused confusion as to whether the Act should apply to sister-state judgments because “foreign state” and “foreign judgment” are terms of art generally used in connection with recognition and enforcement of sister-state judgments. See, e.g., Eagle Leasing v. Amandus, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court’s
application of UFMJRA to a sister-state judgment, but noting lower court’s confusion was understandable as “foreign judgment” is term of art normally applied to sister-state judgments).

See also, Uniform Enforcement of Foreign Judgments Act §1 (defining “foreign judgment” as the judgment of a sister state or federal court). Several states (for example, New York) have nonuniform amendments to the Act that change the defined terms to “foreign country” and “foreign country judgment.”

The current Act defines a “foreign state” as “any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands.” This definition obviously needs to be updated. The Committee decided at its October, 2004 drafting committee meeting that, rather than simply updating the list in the current Act’s definition of “foreign state,” the new definition of “foreign country” should combine the “listing” approach of the current Act’s “foreign state” definition with a provision that defines “foreign country” in terms of whether the judgments of the particular governmental unit’s courts are initially subject to the Full Faith and Credit Clause standards for determining whether those judgments will be recognized. Under this new definition, a governmental unit is a “foreign country” if it is (1) not the United States or a state, district, commonwealth, territory or insular possession of the United States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

The Full Faith and Credit Clause, Art. IV, section 1, provides that “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.” Whether the judgments of a governmental unit are subject to the Full Faith and Credit Clause may be determined by judicial interpretation of the Full Faith and Credit Clause or by statute, or by a combination of these two sources. For example, pursuant to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress has passed 28 U.S.C.A. §1738, which provides inter alia that court records from “any State, Territory, or Possession of the United States” are entitled to full faith and credit under the Full Faith and Credit Clause. In Stoll v. Gottlieb, 305 U.S. 165, 170 (1938), the United States Supreme Court held that this statute also requires that full faith and credit be given to judgments of federal courts. States also have made determinations as to whether certain types of judgments are subject to the Full Faith and Credit Clause. Under the definition of “foreign country” in this Draft, the determination as to whether a governmental unit’s judgments are subject to full faith and credit standards should be made by reference to any relevant law, whether statutory or decisional, that is applicable “in this state.”

The Draft’s definition of “foreign country” in terms of those judgments not subject to Full Faith and Credit standards also has the advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a registration procedure for the enforcement of sister state and equivalent judgments, defines a “foreign judgment” as “any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.” Uniform Enforcement of Foreign
Judgments Act, §1 (1964). By defining “foreign country” in the Recognition Act in terms of those judgments not subject to full faith and credit standards, the Draft makes it clear that the Enforcement Act and the Recognition Act are mutually exclusive – if a foreign money judgment is subject to full faith and credit standards, then the Enforcement Act’s registration procedure is available with regard to its enforcement; if the foreign money judgment is not subject to full faith and credit standards, then the foreign money judgment may not be enforced until recognition of it has been obtained in accordance with the provisions of the Recognition Act.

The definition of “foreign-country judgment” differs significantly from the current Act’s definition of “foreign judgment.” The current Act’s definition serves in large part as a scope provision for the Act. The part of the definition defining the scope of the Act has been moved to section 2, which is the scope section. Unlike the definition of “foreign judgment,” the definition of “foreign country judgment” refers to judgments of “a court” of the foreign country.

The definition of “judgment debtor,” which appeared in earlier drafts, was deleted in the October, 2004 draft because that definition is no longer necessary in light of the Committee’s decision at its April, 2004 drafting committee meeting not to include a registration procedure in the Act.

With regard to the problems leading to changes in this section, see generally the discussion in section III(A) of the Study Report.

Comments to be added:

(1) A comment acknowledging that, while the concept of “governmental unit” will in most cases be clear, as the money judgment will be one issued by a court of a foreign country or one of its subdivisions, in some instances issues may arise, and the Recognition Act leaves those issues for determination by the courts. For example, a number of international tribunals, such as the International Court of Justice, the European Court of Justice, the Law of the Sea Tribunal, the European Court of Human Rights, and the Inter-American Court of Human Rights, issue judgments. Whether a money judgment issued by such a tribunal would constitute a judgment of a “foreign country” as a judgment of a governmental unit not subject to full faith and credit standards is left for determination by the courts. (It should be noted that the ALI International Jurisdiction and Judgments Project excludes judgments of international tribunals from its proposed Act).

(2) A comment explaining that arbitral awards are excluded from the Recognition Act, but that a foreign-country money judgment confirming or setting aside an arbitral award is within the Recognition Act.

(3) A comment explaining that a “judgment” need not take a particular form – any order or decree that meets the requirements of this section and comes within the
section of the Act under Section 3 is subject to the Act. Similarly, any tribunal that
issues such a “judgment” comes within the term “court” for purposes of the
Recognition Act.

(4) A comment explaining that a judgment need not be between two private parties in
order to constitute a judgment for purposes of the Recognition Act. Judgments in
which a governmental entity is a party also are included. (Such judgments, of
course, would also have to meet the requirements of Section 3).

SECTION 3. SCOPE OF THE ACT.

(a) Except as otherwise provided in subsection (b), this [act] applies to any
foreign-country judgment to the extent that the foreign-country 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, even though an appeal from the foreign-country judgment is
pending or the foreign-country judgment is subject to appeal in the foreign country where it was
rendered.

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

(c) The party seeking recognition of a foreign-country judgment has the burden of
establishing that the foreign-country judgment meets the requirements of this section.
This section is based on Section 2 of the current Act. Subsection (b) contains material that formerly was included as part of the definition of “foreign judgment.” For discussion of the problems caused by inclusion of this material in the definition of “foreign judgment,” see Study Report, section III (A) (3).

The domestic relations exclusion has been redrafted to make it clear that all judgments in domestic relations matters are excluded from the Act, not just judgments “for support” as provided in the current Act. See Study Report, section III (A) (4).

The October 2004 Draft added the qualifying phrase “if the foreign country judgment grants recovery of a sum of money” to the requirement that the foreign country judgment be enforceable where rendered in light of the fact that only judgments that grant recovery are eligible to be enforced. If the judgment denies recovery, then there is no money judgment to be enforced. The Drafting Committee decided at its October 2004 meeting to delete that phrase and place its substance in a comment.

Section 2 of the current Act does not contain any provision indicating who has the burden of proof to establish whether a foreign country judgment is within the scope of the Act. Courts generally have held that the burden of proof is on the person seeking recognition to establish that the judgment is final, conclusive and enforceable where rendered. E.g., Mayekawa Mfg. Co. Ltd. v. Sasaki, 888 P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish judgment is final, conclusive, and enforceable where rendered); Bridgeway Corp. v. Citibank, 45 F.Supp.2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a final judgment, conclusive and enforceable where rendered); S.C.Chimexim S.A. v. Velco Enterprises, Ltd., 36 F. Supp.2d 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of establishing conclusive effect). See Study Report, section III (B) (1). The Committee decided at its October 2004 meeting that the burden of proof to establish whether a foreign country judgment is within the scope of the Act should be on the party seeking recognition of the foreign country judgment with regard to both subsection (a) and subsection (b).

The Committee decided at its April 2004 meeting to add the “to the extent” language of subsection (3)(a) in order to make it clear that, if only part of a foreign country judgment meets the requirements of subsection (3)(a), then the foreign country judgment may be recognized under this Act to that extent. The Committee decided at its October 2004 meeting to add similar language to subsection (3)(b).

Comments to be added:

(1) A comment regarding the fact that the requirement that a foreign country judgment be “final, conclusive and enforceable where rendered” involves three distinct concepts, all of which must be present in order to satisfy the requirement.
(2) A comment discussing the fact that some countries set out VAT taxes as a separate element of a judgment from the purchase price and that this should not make the judgment to that extent one for taxes.

(3) A comment discussing the rationale for the domestic relations exclusion. The comment will note the tradition of different treatment of judgments in domestic relations matters, the fact that the considerations with regard to recognition of such judgments are somewhat different from those with regard to other foreign-country money judgments, that there is a sufficient degree of variation among foreign-country domestic relations judgments to warrant giving the states the ability to engage in a higher degree of scrutiny under principles of comity, and that other statutes (e.g., the Uniform Interstate Family Support Act and the federal International Child Support Enforcement Act, 42 U.S.C. §659a (1996)) address various aspects of the recognition and enforcement of domestic relations awards. The comment also will underline the fact that foreign-country money judgments in domestic relations matters are enforceable under principles of comity, despite their exclusion from the Recognition Act, and that courts normally do enforce them under comity principles.

(4) Comments discussing the rationale for the other exclusions from coverage – judgments for taxes and for fines and other penalties.

SECTION 4. STANDARDS FOR RECOGNITION OF FOREIGN COUNTRY JUDGMENT.

(a) Except as otherwise provided in subsections (b) and (c), a court of this state shall recognize a foreign-country judgment within the scope of this [act].

(b) A court of this state may not recognize a foreign-country judgment if

(1) the foreign-country 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.

(c) A court of this state need not recognize 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 foreign-country judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the foreign-country judgment or the [cause of action] [claim for relief] on which the foreign country judgment is based is repugnant to the public policy of this state or of the United States;

(4) the foreign-country 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;

(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 foreign-country judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the foreign-country judgment; or

(8) the specific proceeding in the foreign court leading to the foreign-country judgment was not compatible with the requirements of due process of law.

(d) The party resisting recognition of the foreign country judgment has the burden
of establishing that one of the grounds for nonrecognition stated in subsection (b) or (c) exists.

Reporter’s Notes

This section is based on Section 4 of the current Act, and is the same in substance, except as noted below. For the general context of these amendments, see Study Report, section III (D), and particularly, section III (D)(3).

Subsection (c)(2) clarifies the type of “fraud” that will serve as a ground for denying recognition. Courts interpreting this provision have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present his case — is sufficient. The Draft follows these cases. See Study Report, Section III (D).

The public policy exception in section 4 (b)(3) of the current Act says that recognition may be denied if “the cause of action” is repugnant to the State’s public policy. Based on this “cause of action” language, some courts have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. E.g., Southwest Livestock & Trucking Co., Inc. v. Ramon, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48%); Guinness PLC v. Ward, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); The Society of Lloyd’s v. Turner, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); cf Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). Other courts have applied the public policy exception without taking any notice of this language. See Study Report, Section III (D)(2)(ii).

At its October 2004 drafting committee meeting, the Committee decided that, in light of the decisions reading the public policy exception as narrowly focused on the cause of action, the language of subsection (c)(3) should be rewritten to include both the cause of action and the judgment itself. Under this language, if either the judgment or the cause of action upon which it is based is repugnant to public policy, the court has discretion to deny recognition to the foreign country judgment.

The language “or of the United States” has been added to the public policy exception to make it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. Most courts have recognized that state public policy also includes U.S. public policy (and principles of federalism would seem to dictate this result), but not all courts considering the issue have done so. Compare Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment; when public policy is found in U.S.
Subsection (c)(7) is a new subsection that is based on a similar provision contained in section 5(a)(ii) of the ALI International Jurisdiction and Judgments Project. Under the current Recognition Act, a court must deny recognition to a foreign country judgment if the judgment was rendered under a judicial system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.” This provision has been interpreted as focusing on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign country judgment was impartial and fair. E.g., The Society of Lloyd’s v. Turner, 303 F.3d 325, 330 (5th Cir. 2002); CIBC Mellon Trust Co. v. Mora Hotel Corp., N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002); Society of Lloyd’s v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000). Subsection (c)(7) would allow the court also to consider a lack of impartiality and fairness in the individual proceeding leading to the foreign country judgment. See Study Report, section III (D)(1).

During consideration of subsection (c)(7) at its April 2004 drafting committee meeting, members of the Committee expressed support for subsection (c)(7), noting that bribery and other forms of judicial misconduct can be a real issue with regard to certain foreign country judgments. On the other hand, Committee members also noted that the language of (c)(7) does not explicitly address the broader issue of procedural unfairness in the specific proceedings leading to the foreign country judgment. Subsection (c)(8) is designed to address the issue of procedural unfairness in specific proceedings.

The addition of subsections (c)(7) and (8) raise the question of the relationship of these provisions to subsection (b)(1), which focuses on whether the judicial system as a whole provides impartial tribunals and is compatible with the requirements of due process of law. Is (b)(1) redundant in light of the addition of (c)(7) and (8), which allow a focus on these issues in the individual proceedings leading to the foreign country judgment? The Reporter believes that subsection (b)(1) still serves an important purpose. Subsection (b)(1) is a mandatory ground for denying recognition, while subsections (c)(7) and (8) are discretionary. Thus, if the entire judicial system in which a foreign country judgment was rendered does not provide impartial tribunals or procedures compatible with due process, the court is required to deny recognition to the foreign country judgment. On the other hand, if there is corruption or lack of due process in the particular proceedings leading to the foreign country judgment under subsection (c)(7) or (8), the court may, but need not, deny recognition. For example, a court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness because the party resisting recognition failed to raise the issue on appeal from the foreign country judgment in the rendering state and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.
Subsection (d) allocates the burden of proof on the issue of nonrecognition to the party opposing recognition of the foreign judgment. Current section 4 is silent as to who has the burden of proof. Courts have taken different positions on the issue. Some courts, including the New York courts, hold that the person seeking recognition has the burden of establishing the nonexistence of the mandatory grounds for nonrecognition, while the person resisting recognition has the burden of establishing the existence of one of the nonmandatory grounds, *E.g.*, Bridgeway Corp. v. Citibank, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (Plaintiff has burden to show no mandatory basis under 4(a) for recognition exists; defendant has burden regarding nondiscretionary bases); S.C.Chimexim S.A. v. Velco Enterprises, Ltd., 36 F.Supp.2d 206, 212 (S.D.N.Y. 1999) (burden of proof is on plaintiff regarding mandatory requirements and on defendant regarding discretionary requirements); Dresdner Bank, AG v. Haque, 161 F.Supp.2d 259, 263 (S.D.N.Y. 2001) (plaintiff has burden of proof no mandatory ground for nonrecognition exists; defendant has burden of proof to establish that a discretionary basis for nonrecognition applies); Banque Libanaise Pour Le Commerce v. Khreich, 915 F.2d 1000, 1005 (5th Cir. 1990) (discretionary grounds are phrased as affirmative defenses and thus burden of proof regarding them is on the defendant). Other courts hold that the person resisting recognition has the burden of proof with regard to both mandatory and discretionary grounds for nonrecognition. *E.g.*, Kam-Tech Systems, Ltd. v. Yardeni, 774 A.2d 644, 649 (N.J. App. 2001) (burden of proof to establish ground for nonenforcement should be on party asserting the ground, though burden might be shifted when fundamental fairness warrants it, as, for example, when the information about the foreign proceeding is peculiarly within the knowledge or control of the party seeking enforcement or is inordinately burdensome for the opponent to obtain); The Courage Co. LLC v. The ChemShare Corp., 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition); Dart v. Balaam, 953 S.W.2d 478, 480 (Tex. App. 1997) (burden is on the defendant regarding all grounds for nonrecognition); Southwest Livestock & Trucking Co., Inc. v. Ramon, 169 F.3d 317, 320 (5th Cir. 1999) (court must recognize judgment unless judgment debtor establishes one of the ten specific grounds for nonrecognition). See Study Report, section III (D)(4). The Committee decided at its April 2004 drafting committee meeting that placing the burden of proof on the party opposing recognition with regard to both mandatory and discretionary grounds for nonrecognition was appropriate.

Some cases, such as Kam-Tech, cited above, have recognized an exception to this allocation when fundamental fairness indicates that the burden should be placed on the party seeking enforcement, for example when the information about the foreign proceeding is peculiarly within the knowledge or control of the party seeking enforcement or it is inordinately burdensome for the party opposing recognition to obtain information about the foreign proceeding. The Committee may wish to consider whether such an exception should be included in subsection (d).

**Comments to be added:**
A comment explaining that the standard for determining whether a judgment violates public policy is very high and thus only a narrow category of cases will be excluded based on the public policy exception;

A comment providing examples of the application of subsections (c)(7) and (c)(8);

A comment explaining that the due process standard is measured by fundamental fairness, not by the intricacies of what the courts have held due process to require in the domestic context;

A comment providing examples of the application of subsection (c)(2).

SECTION 5. PERSONAL JURISDICTION.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign country; or
(6) the defendant operated a motor vehicle or airplane in the foreign
country and the proceeding involved a [cause of action] [claim for relief] arising out of that
operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive,
and the courts of this state may recognize other bases of personal jurisdiction as sufficient to
support a foreign-country judgment.

Reporter’s Notes

The substance of this section is the same as section 5 of the current Act, except as noted
below. See Study Report, section III (E).

Subsection (a)(4) has been revised to extend its concept to other forms of business
organization in addition to corporations pursuant to a Committee decision at the April 2004
drafting committee meeting.

No changes were made to this section at the October 2004 drafting committee meeting.

Comments to be added:

(1) A comment to subsection (b)(3) indicating that the “agreed” language of that
subsection allows the defendant to challenge the validity of the purported agreement to submit to
the foreign court’s jurisdiction.

SECTION 6. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY

JUDGMENT.

(a) 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.

(b) 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.
The most troublesome interpretative issues that have arisen with regard to the current Act are those relating to the appropriate procedure for making the determination as to whether to recognize a foreign country judgment. The current Act is silent on this question. At common law, a foreign judgment, whether of a state or of a foreign country, was recognized by bringing an action on the foreign judgment in the courts of the state where recognition was sought to have the foreign judgment domesticated. Once domesticated, the judgment was treated as a judgment of the state in which the action to domesticate the judgment was filed, and could be enforced accordingly. The issue of recognition of foreign country judgments under the current Act still is most often raised by bringing an action on the foreign country judgment, and the current Act has worked fairly smoothly when the issue of recognition is raised in the context of such an action.

With regard to enforcement of sister state judgments, however, the registration procedure provided by the Uniform Enforcement of Foreign Judgments Act is available in most states. That Act allows a judgment creditor to obtain enforcement of a sister state judgment simply by filing an authenticated copy of the judgment in the clerk’s office in the forum state. By its terms, the Enforcement Act only applies to sister state judgments, and, therefore, its provisions do not provide for raising or determination of issues relating to recognition of a foreign judgment. With regard to sister state judgments, recognition is mandated by the Full Faith and Credit clause. Nevertheless, some courts have held that its registration procedure can be utilized with regard to a foreign country judgment without any separate determination of whether the foreign country judgment is entitled to recognition under the Act. E.g., Society of Lloyd’s v. Ashenden, 233 F.3d 473 (7th Cir. 2000). Other courts have held (correctly, it would seem) that the Enforcement Act only applies to enforcement of foreign judgments and, therefore, at best would be available as a means of enforcement of a foreign country judgment only after a separate proceeding had made the determination that the foreign country judgment was entitled to recognition. E.g., Matusevitch v. Telnikoff, 877 F.Supp. 1 (D.D.C. 1995); Hennessy v. Marshall, 682 S.W.2d 340 (Tex. App. 1984). In fact, the lack of any procedure for raising defenses to recognition, as opposed to defenses to enforcement, under the Uniform Enforcement of Foreign Judgments Act has led some courts to find that if the Recognition Act is interpreted to authorize the use of the Enforcement Act as the means for determining whether a foreign country judgment should be recognized as well as enforced, then the Recognition Act is unconstitutional as applied when the Enforcement Act is the procedure used because the party opposing recognition is denied notice and a hearing with regard to issues related to recognition of the foreign country judgment. E.g., Detamore v. Sullivan, 731 S.W.2d 122 (Tex. App. 1987); Plastics Engineering Inc. v. Diamond Plastics Corp., 764 S.W. 2d 924 (Tex. App. 1989). (In Don Docksteader Motors, Ltd. v. Patal Enterprises, Ltd, 794 S.W. 2d 760 (Tex. 1990), the Texas Supreme Court disapproved of the decisions in Detamore and Plastics Engineering to the extent those decisions were in conflict with its decision that the current Act was constitutional when the procedure for recognition and enforcement was the filing of an action on the judgment rather than use of the Enforcement Act procedure; because the Detamore and Plastics Engineering decisions were based specifically on use of the Enforcement Act rather than an action on the judgment, however, their core rationale
apparently remains intact.)

Some states have nonuniform amendments to the current Act that provide for a recognition procedure. New York, for example, provides that recognition of a foreign country judgment may be raised “by an action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.” Florida has a nonuniform amendment creating a registration procedure in which issues of recognition may be raised.

For further discussion of these issues, see Study Report, section III (C).

This section explicitly sets out the ways in which the issue of recognition may be raised. It contemplates that recognition may come up in the context of a pending proceeding (usually, although not always, because one of the parties wants to assert the preclusive effect of the foreign country judgment) or as an original matter. When the issue of recognition is raised as an original matter, this section follows those states that have required that the party seeking recognition bring an action on the foreign country judgment requesting that the court recognize the foreign country judgment. As is current practice, such an action could, and often would, include a request for relief in addition to recognition, such as a request that the court enforce the judgment or a request for prejudgment relief to preserve assets pending determination of the action.

At its April 2004 drafting committee meeting, the Committee considered and ultimately rejected a provision that would alternatively have allowed the recognition issue to be raised through a registration procedure analogous to that provided by the Uniform Enforcement of Foreign Judgments Act for sister-state judgments. The Committee decided that a registration procedure was not appropriate in the context of recognition of foreign country judgments. The Committee concluded that the safeguards that would be required in a foreign country judgment registration procedure in order to adequately protect the judgment debtor would remove most, if not all, of the efficacy of a registration procedure for the judgment creditor.

A registration procedure represents a balance between the interest of the judgment creditor in obtaining quick and efficient recognition and enforcement of a judgment when the judgment debtor has already been provided with an opportunity to litigate the underlying issues, and the interest of the judgment debtor in being provided an adequate opportunity to raise and litigate issues regarding whether the foreign country judgment should be recognized. In the context of sister-state judgments, this balance favors use of a truncated procedure such as that found in the Enforcement Act. Recognition of sister-state judgments normally is mandated by the Full Faith and Credit Clause. Courts recognize only a very limited number of grounds for denying full faith and credit to a sister-state judgment – that the rendering court lacked jurisdiction, that the judgment was procured by fraud, that the judgment has been satisfied, or that the limitations period has expired. Thus, the judgment debtor with regard to a sister-state judgment normally does not have any grounds for opposing recognition and enforcement of the
judgment. The extremely limited grounds for denying full faith and credit to a sister-state
judgment reflect the fact such judgments will have been rendered by a court that is subject to the
same due process limitations and the same overlap of federal statutory and constitutional law as
the forum state’s courts, and, to a large extent, the same body of court precedent and socio-
economic ideas as those shaping the law of the forum state. Therefore, there is a strong
presumption of fairness and competence attached to a sister-state judgment that justifies use of a
registration procedure.

The balance between the benefits and costs of a registration procedure is significantly
different, however, in the context of recognition and enforcement of foreign country judgments.
Unlike the limited grounds for denying full faith and credit to a sister-state judgment, the
Recognition Act provides a number of grounds upon which recognition of a foreign country
judgment may be denied. Determination of whether these grounds apply requires the court to
look behind the foreign country judgment to evaluate the law and the judicial system under
which the foreign country judgment was rendered. The existence of these grounds for
nonrecognition reflects the fact there is less expectation that foreign country courts will follow
procedures comporting with U.S. notions of due process and jurisdiction or that those courts will
apply laws viewed as substantively tolerable by U.S. standards. In some situations, there also
may be suspicions of unfairness or fraud in the foreign country proceedings. These differences
between sister-state judgments and foreign country judgments provide a justification for
requiring judicial involvement in the decision whether to recognize a foreign country judgment in
all cases in which that issue is raised.

The Drafting Committee considered whether a registration procedure could be devised
that would adequately protect the judgment debtor in the foreign country judgment context while
still providing expedited recognition and enforcement for the judgment creditor. Unlike the
Enforcement Act registration procedure for sister-state judgments, the draft registration
procedure considered by the Committee provided that the filing of the foreign country judgment
with the clerk of court had no effect for 45 days after notice of registration of the foreign country
judgment was sent to the judgment debtor. The Committee concluded that, in order to
adequately protect the judgment debtor, the registration procedure also would have to require that
the judgment debtor be served with notice of the registration in the same manner as the judgment
debtor would be served with process if an action on the judgment were filed, rather than simply
being mailed a notice of registration of the judgment as provided in the Enforcement Act.

Two of the main advantages of a registration procedure to the judgment creditor,
however, are the ability to provide notice by mail to the judgment debtor in lieu of more formal
service of process and to obtain the right to collect on the judgment simply by registering it.
Once the Committee determined that these two features must be removed in order to strike an
appropriate balance between the interests of the judgment creditor and the judgment debtor in the
foreign country judgment context, the Committee concluded that the resulting registration
procedure would not be likely to be much more efficient than simply filing an action on the
foreign country judgment.
Further, a registration procedure has at least one significant disadvantage for the judgment creditor – because it does not involve the court, it does not allow the judgment creditor to obtain prejudgment relief. Thus, if a judgment creditor is concerned about assets of the judgment debtor disappearing or otherwise wishes to seek prejudgment relief, the judgment creditor likely will opt for an action on the foreign country judgment even if a registration procedure is available as an alternative.

For these reasons, the Committee decided at its April 2004 drafting committee meeting that a registration procedure was not an appropriate means for recognition of foreign country judgments. This section thus provides that the only way in which the issue of recognition may be raised under the Act is in a court proceeding.

The Committee also briefly considered whether the New York approach, which allows a judgment creditor to bring an action on a foreign country judgment by filing a motion for summary judgment in lieu of complaint, might be adopted. Because the New York approach would involve a rule of civil procedure, it was suggested that this approach would run into enactment difficulties in states in which rules of procedure are adopted by the State Supreme Court rather than by the legislature. Therefore, the Committee decided not to pursue this alternative.

Comments to be added:

(1) A comment discussing the fact that an action on the foreign-country judgment under section 6 is a separate action from the action that gave rise to the foreign-country judgment, and that the parties cannot relitigate issues raised in the original action leading to the foreign-country judgment in the action to have the judgment recognized.

(2) A comment flagging the issue of whether presence of assets of the debtor in a state is a sufficient basis for personal jurisdiction over the debtor in light of Shaffer v. Heitner, 433 U.S. 186, 210 n.36 (1977), noting that courts are split on this issue, and indicating that this Act takes no position with regard to that issue.

(3) A comment noting that this Act does not effect state procedural requirements, and that the procedures for raising the issue of recognition stated in section 6 must comply with all state procedural rules with regard to those types of actions.

SECTION 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT UNDER THIS [ACT]. If the court in a proceeding under Section 6 finds that the foreign-country judgment is entitled to recognition under this [act], then the foreign-country
judgment

(a) is conclusive between the parties to the extent that it grants or denies recovery of a sum of money; and

(b) is enforceable in the same manner and to the same extent as a judgment of this state.

Reporter’s Notes

The substance of subsection (a) is the same as that in Section 3 of the current Act. The material has been relocated as part of a reordering of the Act necessitated by the addition of provisions dealing with the procedure for recognition of foreign country judgments.

Subsection (b) is new. Section 3 of the current Recognition Act provides that a foreign country judgment meeting the requirements of the Act “is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.” The Committee decided at its October 2004 drafting committee meeting that it would be more appropriate to provide that a foreign country judgment that is entitled to recognition under the Act is enforceable in the same manner and to the same extent as a judgment of the recognizing state.

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 recognition or enforcement of the foreign country judgment until the appeal is concluded, the time for appeal expires, or the party appealing has had sufficient time to prosecute the appeal and has failed to do so.

Reporter’s Notes

This section is the same substantively as section 6 of the current Act, except that it adds as an additional measure for the duration of the stay “the time for appeal expires.”

The reference to “defendant” in section 6 of the current Recognition Act has been changed to a reference to “a party.”
No changes were made in this section at the October 2004 drafting committee meeting.

SECTION 9. TIME IN WHICH TO COMMENCE AN ACTION.

(a) An action to recognize a foreign-country judgment for the purpose of having that foreign-country judgment enforced by this state must be commenced within the earlier of the time during which the foreign-country judgment may be enforced in the foreign country in which the foreign-country judgment was rendered or 15 years from the date that the foreign-country judgment was entered in the foreign country in which the foreign-country judgment was rendered.

(b) This section does not apply to recognition of a foreign-country judgment solely for the purpose of giving the foreign-country judgment preclusive effect or when recognition of the foreign-country judgment is sought solely to use the foreign-country judgment as a setoff.

Reporter’s Notes

The current Act does not contain a statute of limitations. Some courts have applied the state’s general statute of limitations, E.g., Vrozos v. Sarantopoulos, 552 N.E.2d 1053 (Ill. App. 1990) (as Recognition Act contains no statute of limitations, general five-year statute of limitations applies), while others have applied the statute of limitations applicable with regard to enforcement of a domestic judgment, E.g., La Societe Anonyme Goro v. Conveyor Accessories, Inc., 677 N.E. 2d 30 (Ill. App. 1997). See Study Report, section III (F)(1).

The Recognition Act only applies to foreign country judgments that are enforceable where rendered. Thus, if the period of limitations on enforcement has expired in the rendering state, the foreign country judgment would not be subject to the Recognition Act. At its April 2004 drafting committee meeting, the Committee decided that, while the period during which a foreign country judgment may be recognized under this Act normally should be measured by the period during which it is enforceable in the rendering state, when recognition is sought for purposes of enforcement of the foreign country judgment in the forum state, an outer limit of fifteen years should be placed on the ability to bring an action seeking recognition of the foreign country judgment.
This section only applies to an action seeking recognition for purposes of enforcing the foreign country judgment. It does not apply to recognition of the foreign country judgment for the purpose of giving the foreign country judgment preclusive effect or for the purpose of asserting the foreign country judgment as a setoff.

Comments to be added:

(1) A comment pointing out that the exception of subsection (b) is a standard exception with regard to application of a statute of limitations.

(2) A comment discussing the relationship of this section to section 3 (which provides that a foreign country judgment must be enforceable where rendered in order to be within the scope of the Act.)

SECTION 10. SAVING CLAUSE. This act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this act.

Reporter’s Notes

This section is the same in substance as Section 7 of the current Act. The use of the defined term “foreign country judgment” to mean any judgment of a foreign country, including those not covered by this Act, rather than the defined term “foreign judgment” in Section 7 of the current Act, which was defined as limited to foreign judgments covered by the Act, is intended to resolve the ambiguity noted by courts and commentators as to the meaning of the saving clause. See Study Report, section III (A)(3).

The section was rewritten based on comments at the April 2004 drafting committee meeting. No changes were made to this section at the October 2004 drafting committee meeting.

SECTION 11. UNIFORMITY OF INTERPRETATION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Reporter’s Notes

This section is substantively the same as Section 8 of the current Act. The section has been rewritten to reflect current Conference practice.
SECTION 12. REPEAL. [The following [acts] are repealed:

(1) Uniform Foreign Money-Judgments Recognition Act of 1962

(2)

(3) .]

Reporter’s Notes

This section is an updated version of Section 10 of the current Act.

SECTION 13. EFFECTIVE DATE.

(a) This [act] takes effect … .

(b) This [act] shall apply to all actions for recognition of a foreign-country judgment filed on or after the effective date of this [act].

Reporter’s Notes

Subsection (a) is the same as Section 11 of the current Act. At the October 2004 drafting committee meeting, the Committee decided that the Act should apply to all actions for recognition commenced on or after the effective date of the Act. That decision is reflected in subsection (b).

SECTION 14. RECIPROCITY.

Note: The Committee currently is considering whether the Uniform Foreign-Country Money Judgments Recognition Act should contain a reciprocity requirement, either as a mandatory or discretionary ground for denial of recognition to a foreign-country judgment. The Committee feels that this is an important issue, and one with regard to which it would like to receive as much comment as possible. The draft of the Uniform Foreign-Country Money Judgments Recognition Act currently does not contain a reciprocity provision. In order to facilitate comment on the advisability of including such a provision in the Uniform Foreign-Country Money Judgments Recognition Act, the reciprocity provision contained in Section 7 of the American Law Institute International Jurisdiction and Judgments Project Tentative Draft No.2 (April 13, 2004), is set out below. The ALI International Jurisdiction and Judgments Project provision provides an example of what such a reciprocity provision would entail, and addresses a number of the issues that a reciprocity requirement would raise.
§7 Reciprocal Recognition and Enforcement of Foreign Judgments

A foreign judgment shall not be recognized or enforced in a court in the United States if the court finds that comparable judgments of courts in the United States would not be recognized or enforced in the courts of the state of origin.

A judgment debtor or other person resisting recognition or enforcement of a foreign judgment in accordance with this section shall raise the defense of lack of reciprocity with specificity as an affirmative defense. Once the defense of lack of reciprocity is raised, [the judgment creditor or other person seeking to rely on the foreign judgment shall have the burden to show that the courts of the state of origin would grant recognition and enforcement to comparable judgments of courts in the United States] [the party resisting recognition or enforcement shall have the burden to show that there is substantial doubt that the courts of the state of origin would grant recognition or enforcement to comparable judgments of courts in the United States.] Such showing may be made through expert testimony, or by judicial notice if the law of the state of origin or decisions of its courts are clear.

In making the determination required under subsections (a) and (b), the court shall, as appropriate, inquire whether the courts of the state of origin deny enforcement to

- judgments against nationals of that state in favor of nationals of another state;
- judgments originating in the courts of the United States or of a state of the United States;
- judgments for compensatory damages rendered in actions for personal injury or death;
- judgments for statutory claims;
- particular types of judgments rendered by courts in the United States similar to the foreign judgment for which recognition or enforcement is sought;
- recognition practice of the state of origin with regard to judgments of other states.

Denial by courts of the state of origin of enforcement of judgments for punitive, exemplary, or multiple damages shall not be regarded as denial of reciprocal enforcement of judgments for the purposes of this section if the courts of the state of origin would enforce the compensatory portion of such judgments.

The Secretary of State is authorized to negotiate agreements with foreign states or groups of states setting forth reciprocal practices concerning recognition and enforcement of judgments rendered in the United States. The existence of such an agreement between a foreign state or group of foreign states and the United States establishes that the requirement of reciprocity has been met as to judgments within the agreement. The fact that no such agreement between the state of origin and the United States is in effect, or that the agreement is not applicable with respect to the judgment for which recognition or enforcement is sought, does not of itself establish that the state fails to meet the reciprocity requirement of this section.

(f) A party seeking to raise a defense under this section may, in appropriate cases, be required to give security.