

D R A F T

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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With Reporter's Notes

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UNIFORM FOREIGN COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

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UNIFORM FOREIGN COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

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1 **UNIFORM FOREIGN COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)**

2
3 **SECTION 1. DEFINITIONS.** As used in this Act:

4 (a) “Foreign country” means any governmental unit with regard to which the
5 decision in this State as to whether to recognize the judgments of that governmental unit’s courts
6 is not initially subject to determination under the standards for recognition established by the
7 Full Faith and Credit Clause of the United States Constitution.

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

9 **Reporter’s Notes**

10
11 The defined terms “foreign state” and “foreign judgment” in the current Act have been
12 changed to “foreign country” and “foreign country judgment” in order to make it clear that the
13 Act does not apply to recognition of sister-state judgments. Some courts have noted that the
14 “foreign state” and “foreign judgment” definitions have caused confusion as to whether the Act
15 should apply to sister-state judgments because “foreign state” and “foreign judgment” are terms
16 of art generally used in connection with recognition and enforcement of sister-state judgments.
17 *See, e.g., Eagle Leasing v. Amandus*, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court’s
18 application of UFMJRA to a sister-state judgment, but noting lower court’s confusion was
19 understandable as “foreign judgment” is term of art normally applied to sister-state judgments).
20 *See also*, Uniform Enforcement of Foreign Judgments Act §1 (defining “foreign judgment” as
21 the judgment of a sister state or federal court). Several states (for example, New York) have
22 nonuniform amendments to the Act that change the defined terms to “foreign country” and
23 “foreign country judgment.”

24
25 The current Act defines a “foreign state” as “any governmental unit other than the United
26 States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama
27 Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands.” This definition
28 obviously needs to be updated. The Committee decided at its April, 2004 drafting committee
29 meeting to abandon the “laundry list” approach of the current Act’s “foreign state” definition
30 and, instead to define “foreign country” in terms of whether the judgments of the particular
31 governmental unit’s courts are initially subject to the Full Faith and Credit Clause standards for
32 determining whether those judgments will be recognized. Under this new definition, a
33 governmental unit is a “foreign country” if its judgments are not initially subject to Full Faith
34 and Credit Clause standards. The Full Faith and Credit Clause, Art. IV, section 1, provides that
35 “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial
36 Proceedings of every other State. And the Congress may by general Laws prescribe the Manner
37 in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.” Pursuant

1 to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress
2 passed 28 U.S.C.A. §1738, which provides *inter alia* that court records from “any State,
3 Territory, or Possession of the United States” are entitled to full faith and credit under the Full
4 Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the United States
5 Supreme Court held that this statute also requires that full faith and credit be given to judgments
6 of federal courts. Thus, the Draft’s approach captures what appears to have been the underlying
7 principle of the “laundry list” definition in the current Act while not suffering from the need for
8 periodic legislative updating inherent in that approach. The Draft’s definition of “foreign
9 country” in terms of those judgments not subject to Full Faith and Credit standards also has the
10 advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign
11 Judgments Act. That Act, which establishes a registration procedure for the enforcement of
12 sister state and equivalent judgments, defines a “foreign judgment” as “any judgment, decree, or
13 order of a court of the United States or of any other court which is entitled to full faith and credit
14 in this state.” Uniform Enforcement of Foreign Judgments Act, §1 (1964). By defining “foreign
15 country” in the Recognition Act in terms of those judgments not subject to full faith and credit
16 standards, the Draft makes it clear that the Enforcement Act and the Recognition Act are
17 mutually exclusive, and that, between the two acts, they cover the full array of foreign money
18 judgments.
19

20 The definition of “foreign country judgment” differs significantly from the current Act’s
21 definition of “foreign judgment.” The current Act’s definition serves in large part as a scope
22 provision for the Act. The part of the definition defining the scope of the Act has been moved to
23 the section 2, which is the scope section. Unlike the definition of “foreign judgment,” the
24 definition of “foreign country judgment” refers to judgments of “a court” of the foreign country.
25 This makes it clear that the Act does not apply to judgments issued by entities other than courts,
26 such as arbitral awards.
27

28 The definition of “judgment debtor” has been deleted because that definition is no longer
29 necessary in light of the Committee’s decision at its April, 2004 drafting committee meeting not
30 to include a registration procedure in the Act.
31

32 With regard to the problems leading to changes in this section, see generally the
33 discussion in section III(A) of the Study Report.
34

35 SECTION 2. SCOPE OF THE ACT.

36 (a) Except as provided in subsection (b), this Act applies to any foreign country
37 judgment to the extent that the foreign country judgment

38 (1) grants or denies recovery of a sum of money; and

39 (2) is under the law of the foreign country where rendered final,

1 conclusive, and, if the foreign country judgment grants recovery of a sum of money, enforceable,
2 even though an appeal from the foreign country judgment is pending or the foreign country
3 judgment is subject to appeal in the foreign country where the foreign country judgment was
4 rendered.

5 (b) This Act does not apply to a foreign country judgment, even though the
6 foreign country judgment grants or denies recovery of a sum of money, [to the extent that] the
7 foreign country judgment is

8 (i) a judgment for taxes;

9 (ii) a fine or other penalty; or

10 (iii) a judgment for divorce, support, or maintenance, or other judgment
11 rendered in connection with domestic relations matters.

12 (c) The party seeking to have a foreign country judgment recognized has the
13 burden of establishing that the foreign country judgment meets the requirements of subsection
14 (a). [The party seeking to avoid recognition of the foreign country judgment has the burden of
15 establishing that the foreign country judgment is one excluded from the scope of this Act under
16 subsection (b).]

17 **Reporter's Notes**

18
19 This section is based on Section 2 of the current Act. Subsection (b) contains material
20 that formerly was included as part of the definition of "foreign judgment." For discussion of the
21 problems caused by inclusion of this material in the definition of "foreign judgment," see Study
22 Report, section III (A) (3).

23
24 The domestic relations exclusion has been redrafted to make it clear that all judgments in
25 domestic relations matters are excluded from the Act, not just judgments "for support" as
26 provided in the current Act. See Study Report, section III (A) (4).

27
28 The qualifying phrase "if the foreign country judgment grants recovery of a sum of
29 money" has been added to the requirement that the foreign country judgment be enforceable

1 where rendered in light of the fact that only judgments that grant recovery are eligible to be
2 enforced. If the judgment denies recovery, then there is no money judgment to be enforced.
3

4 Section 2 of the current Act does not contain any provision indicating who has the burden
5 of proof to establish whether a foreign country judgment is within the scope of the Act. Courts
6 generally have held that the burden of proof is on the person seeking recognition to establish that
7 the judgment is final, conclusive and enforceable where rendered. *E.g.*, *Mayekawa Mfg. Co.*
8 *Ltd. v. Sasaki*, 888 P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish
9 judgment is final, conclusive, and enforceable where rendered); *Bridgeway Corp. v. Citibank*, 45
10 *F.Supp.2d* 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a
11 final judgment, conclusive and enforceable where rendered); *S.C.Chimexim S.A. v. Velco*
12 *Enterprises, Ltd.*, 36 *F. Supp.2d* 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of
13 establishing conclusive effect). This draft follows those decisions. See Study Report, section III
14 (B) (1).
15

16 The Committee decided at its April, 2004 meeting that the burden of proof with regard to
17 the exclusions from the scope of the Act stated in subsection (b) should not be placed on the
18 party seeking recognition, but did not expressly make the further decision that the Act should
19 state that this burden is placed on the party opposing recognition of the foreign country
20 judgment. This Draft places that burden on the party opposing recognition. The provision is
21 placed in brackets to highlight the fact the Committee has not expressly made a decision on this
22 issue.
23

24 The Committee decided at its April, 2004 meeting to add the “to the extent” language of
25 subsection (2)(a) in order to make it clear that, if only part of a foreign country judgment meets
26 the requirements of subsection (2)(a), then the foreign country judgment may be recognized
27 under this Act to that extent. This Draft adds similar language to subsection(2)(b). The
28 language is placed in brackets to call the Committee’s attention to it, as the Committee has not
29 expressly made a decision on this issue.
30

31 **Comments to be added:**
32

- 33 (1) A comment regarding the fact that the requirement that a foreign country judgment be
34 “final, conclusive and enforceable where rendered” involves three distinct concepts, all
35 of which must be present in order to satisfy the requirement;
36
37 (2) A comment discussing the rationale for the exclusions from coverage and noting that the
38 excluded types of judgments may be enforced under principles of comity;
39
40 (3) A comment discussing the fact that some countries set out VAT taxes as a separate
41 element of a judgment from the purchase price and that this should not make the
42 judgment to that extent one for taxes.
43

44 **SECTION 3. STANDARDS FOR RECOGNITION OF A FOREIGN COUNTRY**

1 **JUDGMENT.**

2 (a) Except as provided in subsections (b) and (c), a court of this State shall
3 recognize a foreign country judgment within the scope of this Act.

4 (b) A court of this State may not recognize a foreign country judgment if

5 (1) the foreign country judgment was rendered under a judicial system,
6 which does not provide impartial tribunals or procedures compatible with the requirements of
7 due process of law;

8 (2) the foreign court did not have personal jurisdiction over the defendant;

9 or

10 (3) the foreign court did not have jurisdiction over the subject matter.

11 (c) A court of this State need not recognize a foreign country judgment if

12 (1) the defendant in the proceedings in the foreign court did not receive
13 notice of the proceedings in sufficient time to enable the defendant to defend;

14 (2) the foreign country judgment was obtained by fraud that deprived the
15 losing party of an adequate opportunity to present its case;

16 (3) the substantive law on which the foreign country judgment is based is
17 repugnant to the public policy of this State or of the United States;

18 (4) the foreign country judgment conflicts with another final and
19 conclusive judgment;

20 (5) the proceeding in the foreign court was contrary to an agreement
21 between the parties under which the dispute in question was to be settled otherwise than by
22 proceedings in that foreign court;

1 (6) in the case of jurisdiction based only on personal service, the foreign
2 court was a seriously inconvenient forum for the trial of the action;

3 [(7) the foreign country judgment was rendered in circumstances that raise
4 substantial doubt about the integrity of the rendering court with respect to the foreign country
5 judgment;] or

6 [(8) the specific proceedings in the foreign court leading to the foreign
7 country judgment were not compatible with the requirements of due process of law.]

8 (d) The person opposing recognition of the foreign country judgment has the
9 burden of establishing that one of the grounds for nonrecognition stated in subsection (b) or (c)
10 exists.

11 **Reporter's Notes**

12
13 This section is based on Section 4 of the current Act, and is the same in substance, except
14 as noted below. For the general context of these amendments, see Study Report, section III (D),
15 and particularly, section III (D)(3).
16

17 Subsection (c)(2) clarifies the type of “fraud” that will serve as a ground for denying
18 recognition. Courts interpreting this provision have found that only extrinsic fraud — conduct of
19 the prevailing party that deprived the losing party of an adequate opportunity to present his case
20 — is sufficient. The Draft follows these cases. See Study Report, Section III (D).
21

22 The public policy exception in subsection 4(b)(3) of the current Act says that recognition
23 may be denied if “the cause of action” is repugnant to the State’s public policy. Based on this
24 “cause of action” language, some courts have refused to find that a public policy challenge based
25 on something other than repugnancy of the foreign cause of action comes within this exception.
26 *E.g.*, *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317 (5th Cir. 1999) (refusing
27 to deny recognition to Mexican judgment on promissory note with interest rate of 48%);
28 *Guinness PLC v. Ward*, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-
29 judgment settlement could not be asserted under public policy exception); *The Society of*
30 *Lloyd’s v. Turner*, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to
31 establish elements of breach of contract violated public policy because cause of action for breach
32 of contract itself is not contrary to state public policy); *cf* *Bachchan v. India Abroad*
33 *Publications, Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British
34 libel judgment should be recognized despite argument it violated First Amendment because New
35 York recognizes a cause of action for libel). Other courts have applied the public policy

1 exception without taking any notice of this language. See Study Report, Section III (D)(2)(ii).

2
3 At its April, 2004 drafting committee meeting, the Committee decided that the public
4 policy exception of subsection (c)(3) should be rewritten to focus on the substantive law on
5 which the judgment is based rather than on either the judgment itself or the cause of action. This
6 brings the Act’s public policy exception more in line with the traditional focus of public policy
7 exceptions.

8
9 The language “or of the United States” has been added to the public policy exception to
10 make it clear that the relevant public policy is that of both the State in which recognition is
11 sought and that of the United States. Most courts have recognized that state public policy also
12 includes U.S. public policy (and principles of federalism would seem to dictate this result), but
13 not all courts considering the issue have done so. *Compare* *Bachchan v. India Abroad*
14 *Publications, Inc.*, 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied
15 recognition because it violates First Amendment; when public policy is found in U.S.
16 Constitution, denial of recognition is constitutionally mandated) *with* *Reading & Bates Constr.*
17 *Co. v. Baker Energy Resources Corp.*, 976 S.W.2d 702 (Tex. App. 1998) (refusing to consider
18 public policy argument based on U.S. patent law because relevant policy is that of the state, and
19 patent infringement is a matter of federal, not state, policy).

20
21 Subsection (c)(7) is a new subsection that is based on a similar provision contained in
22 section 5(a)(ii) of the ALI International Jurisdiction and Judgments Project. Under the current
23 Recognition Act, a court must deny recognition to a foreign country judgment if
24 “the judgment was rendered under a judicial system which does not provide impartial tribunals
25 or procedures compatible with the requirements of due process of law.” This provision has been
26 interpreted as focusing on the judicial system of the foreign country as a whole, rather than on
27 whether the particular judicial proceeding leading to the foreign country judgment was impartial
28 and fair. *E.g.*, *The Society of Lloyd’s v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002); *CIBC Mellon*
29 *Trust Co. v. Mora Hotel Corp., N.V.*, 743 N.Y.S.2d 408, 415 (N.Y. App. 2002); *Society of*
30 *Lloyd’s v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000). Subsection (c)(7) would allow the
31 court also to consider a lack of impartiality and fairness in the individual proceeding leading to
32 the foreign country judgment. See Study Report, section III (D)(1).

33
34 During consideration of subsection (c)(7) at its April, 2004 drafting committee meeting,
35 members of the Committee expressed support for subsection (c)(7), noting that bribery and other
36 forms of judicial misconduct can be a real issue with regard to certain foreign country
37 judgments. On the other hand, Committee members also noted that the language of (c)(7) does
38 not explicitly address the broader issue of procedural unfairness in the specific proceedings
39 leading to the foreign country judgment, and the Committee asked the Reporter to draft other
40 language that would do so. Subsection (c)(8) is designed to address the issue of procedural
41 unfairness in specific proceedings. Subsections (c)(7) and (c)(8) could be combined in one
42 provision, as the Act does in subsection (b)(1) with regard to the concepts of impartiality and
43 fairness in the context of the judicial system as a whole. For purposes of this Draft, however, the
44 provisions have been placed in separate sections to underline the fact they address different
45 concerns. Both provisions also are bracketed in order to highlight the need for further

1 Committee discussion.

2
3 The addition of subsections (c)(7) and (8) raise (at least for the Reporter) a question
4 about the relationship of these provisions to subsection (b)(1), which focuses on whether the
5 judicial system as a whole provides impartial tribunals and is compatible with the requirements
6 of due process of law. Is (b)(1) redundant in light of the addition of (c)(7) and (8), which allow a
7 focus on these issues in the individual proceedings leading to the foreign country judgment? The
8 Reporter believes that subsection (b)(1) still serves an important purpose. Subsection (b)(1) is a
9 mandatory ground for denying recognition, while subsections (c)(7) and (8) are discretionary.
10 Thus, if the entire judicial system in which a foreign country judgment was rendered does not
11 provide impartial tribunals or procedures compatible with due process, the court is required to
12 deny recognition to the foreign country judgment. On the other hand, if there is corruption or
13 lack of due process in the particular proceedings leading to the foreign country judgment under
14 subsection (c)(7) or (8), the court may, but need not, deny recognition. For example, a court
15 might decide not to exercise its discretion to deny recognition despite evidence of corruption or
16 procedural unfairness because the party resisting recognition failed to raise the issue on appeal
17 from the foreign country judgment in the rendering state and the evidence establishes that, if the
18 party had done so, appeal would have been an adequate mechanism for correcting the
19 transgressions of the lower court.
20

21 Subsection (d) allocates the burden of proof on the issue of nonrecognition to the party
22 opposing recognition of the foreign judgment. Current section 4 is silent as to who has the
23 burden of proof. Courts have taken different positions on the issue. Some courts, including the
24 New York courts, hold that the person seeking recognition has the burden of establishing the
25 nonexistence of the mandatory grounds for nonrecognition, while the person resisting
26 recognition has the burden of establishing the existence of one of the nonmandatory grounds,
27 *E.g.*, *Bridgeway Corp. v. Citibank*, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (Plaintiff has burden
28 to show no mandatory basis under 4(a) for recognition exists; defendant has burden regarding
29 nondiscretionary bases); *S.C.Chimexim S.A. v. Velco Enterprises, Ltd.*, 36 F.Supp.2d 206, 212
30 (S.D.N.Y. 1999) (burden of proof is on plaintiff regarding mandatory requirements and on
31 defendant regarding discretionary requirements); *Dresdner Bank, AG v. Haque*, 161 F.Supp.2d
32 259, 263 (S.D.N.Y. 2001) (plaintiff has burden of proof no mandatory ground for
33 nonrecognition exists; defendant has burden of proof to establish that a discretionary basis for
34 nonrecognition applies); *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1005
35 (5th Cir. 1990) (discretionary grounds are phrased as affirmative defenses and thus burden of
36 proof regarding them is on the defendant). Other courts hold that the person resisting
37 recognition has the burden of proof with regard to both mandatory and discretionary grounds for
38 nonrecognition. *E.g.*, *Kam-Tech Systems, Ltd. V. Yardeni*, 774 A.2d 644, 649 (N.J. App. 2001)
39 (burden of proof to establish ground for nonenforcement should be on party asserting the ground,
40 though burden might be shifted when fundamental fairness warrants it, as, for example, when the
41 information about the foreign proceeding is peculiarly within the knowledge or control of the
42 party seeking enforcement or is inordinately burdensome for the opponent to obtain); *The*
43 *Courage Co. LLC v. The ChemShare Corp.*, 93 S.W.3d 323, 331 (Tex. App. 2002) (party
44 seeking to avoid recognition has burden to prove ground for nonrecognition); *Dart v. Balaam*,
45 953 S.W.2d 478, 480 (Tex. App. 1997) (burden is on the defendant regarding all grounds for

1 nonrecognition); *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317, 320 (5th
2 Cir. 1999) (court must recognize judgment unless judgment debtor establishes one of the ten
3 specific grounds for nonrecognition). See Study Report, section III (D)(4). The Committee
4 decided at its April, 2004 drafting committee meeting that placing the burden of proof on the
5 party opposing recognition with regard to both mandatory and discretionary grounds for
6 nonrecognition was appropriate.

7
8 Some cases, such as *Kam-Tech*, cited above, have recognized an exception to this
9 allocation when fundamental fairness indicates that the burden should be placed on the party
10 seeking enforcement, for example when the information about the foreign proceeding is
11 peculiarly within the knowledge or control of the party seeking enforcement or it is inordinately
12 burdensome for the party opposing recognition to obtain information about the foreign
13 proceeding. The Committee may wish to consider whether such an exception should be included
14 in subsection (d).

15
16 Another issue the Committee may wish to consider is whether (c)(4) should provide more
17 guidance as to when it is appropriate for the court to deny recognition to a foreign country
18 judgment because it conflicts with another final and conclusive judgment. For example, an
19 analogous provision in the Hague Convention Draft on Exclusive Choice of Court Agreements,
20 Art. 9, para. 1(f) provides that recognition may be denied when

21
22 the judgment is inconsistent with a judgment given in a dispute between the same parties in
23 the requested State, or it is inconsistent with an earlier judgment given in another State
24 between the same parties and involving the same cause of action, provided that the earlier
25 judgment fulfils the conditions necessary for its recognition in the requested State

26
27 **Comments to be added:**

- 28
29 (1) A comment explaining that the standard for determining whether a judgment violates
30 public policy is very high and thus only a narrow category of cases will be excluded
31 based on the public policy exception;
32
33 (2) A comment providing examples of the application of subsection (c)(7), if it is adopted by
34 the Committee;
35
36 (3) A comment explaining that the due process standard is measured by fundamental
37 fairness, not by the intricacies of what the courts have held due process to require in the
38 domestic context.

39
40 **SECTION 4. [PERSONAL JURISDICTION.]**

41 (a) A foreign country judgment shall not be refused recognition for lack of
42 personal jurisdiction if

- 1 (1) the defendant was served personally in the foreign country;
- 2 (2) the defendant voluntarily appeared in the proceedings, other than for
3 the purpose of protecting property seized or threatened with seizure in the proceedings or of
4 contesting the jurisdiction of the court over the defendant;
- 5 (3) the defendant, prior to the commencement of the proceedings, had
6 agreed to submit to the jurisdiction of the foreign court with respect to the subject matter
7 involved;
- 8 (4) the defendant was domiciled in the foreign country when the
9 proceedings were instituted or was a corporation or other form of business organization that had
10 its principal place of business in, or was organized under the laws of, the foreign country;
- 11 (5) the defendant had a business office in the foreign country and the
12 proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of
13 business done by the defendant through that office in the foreign country; or
- 14 (6) the defendant operated a motor vehicle or airplane in the foreign
15 country and the proceedings involved a [cause of action] [claim for relief] arising out of such
16 operation.

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

20 **Reporter's Notes**

21
22 The substance of this section is the same as section 5 of the current Act, except as noted
23 below. See Study Report, section III (E).

24
25 Subsection (a)(4) has been revised to extend its concept to other forms of business
26 organization in addition to corporations pursuant to a Committee decision at the April, 2004

1 drafting committee meeting.

2
3 **Comments to be added:**

4
5 (1) A comment to subsection (b)(3) indicating that the “agreed” language of that
6 subsection allows the defendant to challenge the validity of the purported agreement to submit to
7 the foreign court’s jurisdiction.
8

9 **SECTION 5. PROCEDURE FOR RECOGNITION OF A FOREIGN COUNTRY**

10 **JUDGMENT.**

11 (a) If recognition of a foreign country judgment is sought in a pending action, the
12 issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

13 (b) If recognition of a foreign country judgment is sought as an original matter,
14 the issue of recognition shall be raised by filing an action for recognition of the foreign country
15 judgment.

16 **Reporter’s Notes**

17
18 The most troublesome interpretative issues that have arisen with regard to the current Act
19 are those relating to the appropriate procedure for making the determination as to whether to
20 recognize a foreign country judgment. The current Act is silent on this question. At common
21 law, a foreign judgment, whether of a state or of a foreign country, was recognized and enforced
22 by bringing an action on the foreign judgment in the courts of the state where recognition and
23 enforcement was sought to have the foreign judgment domesticated. Once domesticated, the
24 judgment was treated as a judgment of the state in which the action to domesticate the judgment
25 was filed. The issue of recognition and enforcement of foreign country judgments under the
26 current Act still is most often raised by bringing an action on the foreign country judgment, and
27 the current Act has worked fairly smoothly when the issue of recognition is raised in the context
28 of such an action.
29

30 With regard to sister state judgments, however, the registration procedure provided by
31 the Uniform Enforcement of Foreign Judgments Act is available in most states. That Act allows
32 a judgment creditor to obtain enforcement of a sister state judgment simply by filing an
33 authenticated copy of the judgment in the clerk’s office in the forum state. By its terms, the
34 Enforcement Act only applies to sister state judgments, and, therefore, its provisions do not
35 provide for raising or determination of issues relating to recognition of a foreign judgment. With
36 regard to sister state judgments, recognition is mandated by the Full Faith and Credit clause.
37 Nevertheless, some courts have held that its registration procedure can be utilized with regard to

1 a foreign country judgment without any separate determination of whether the foreign country
2 judgment is entitled to recognition under the Act. *E.g.*, *Society of Lloyd’s v. Ashenden*, 233
3 F.3d 473 (7th Cir. 2000). Other courts have held (correctly, it would seem) that the Enforcement
4 Act only applies to enforcement of foreign judgments and, therefore, at best would be available
5 as a means of enforcement of a foreign country judgment only after a separate proceeding had
6 made the determination that the foreign country judgment was entitled to recognition. *E.g.*,
7 *Matusevitch v. Telnikoff*, 877 F.Supp. 1 (D.D.C. 1995); *Hennessy v. Marshall*, 682 S.W.2d 340
8 (Tex. App. 1984). In fact, the lack of any procedure for raising defenses to recognition, as
9 opposed to defenses to enforcement, under the Uniform Enforcement of Foreign Judgments Act
10 has led some courts to find that if the Recognition Act is interpreted to authorize the use of the
11 Enforcement Act as the means for determining whether a foreign country judgment should be
12 recognized as well as enforced, then the Recognition Act is unconstitutional as applied when the
13 Enforcement Act is the procedure used because the party opposing recognition is denied notice
14 and a hearing with regard to issues related to recognition of the foreign country judgment. *E.g.*,
15 *Detamore v. Sullivan*, 731 S.W.2d 122 (Tex. App. 1987); *Plastics Engineering Inc. v. Diamond*
16 *Plastics Corp.*, 764 S.W. 2d 924 (Tex. App. 1989). (In *Don Dockstader Motors, Ltd. v. Patal*
17 *Enterprises, Ltd*, 794 S.W. 2d 760 (Tex. 1990), the Texas Supreme Court disapproved of the
18 decisions in *Detamore* and *Plastics Engineering* to the extent those decisions were in conflict
19 with its decision that the current Act was constitutional when the procedure for recognition and
20 enforcement was the filing of an action on the judgment rather than use of the Enforcement Act
21 procedure; because the *Detamore* and *Plastics Engineering* decisions were based specifically on
22 use of the Enforcement Act rather than an action on the judgment, however, their core rationale
23 apparently remains intact.)
24

25 Some states have nonuniform amendments to the current Act that provide for a
26 recognition and enforcement procedure. New York, for example, provides that a foreign country
27 judgment is enforceable “by an action on the judgment, a motion for summary judgment in lieu
28 of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.”
29 Florida has a nonuniform amendment creating a registration procedure in which issues of
30 recognition may be raised.
31

32 For further discussion of these issues, see Study Report, section III (C).
33

34 This section explicitly sets out the ways in which the issue of recognition may be raised.
35 It contemplates that recognition may come up in the context of a pending proceeding (usually,
36 although not always, because one of the parties wants to assert the preclusive effect of the
37 foreign country judgment) or as an original matter. When the issue of recognition is raised as an
38 original matter, this section follows those states that have required that the party seeking
39 recognition bring an action on the foreign country judgment requesting that the court recognize
40 the foreign country judgment. As is current practice, such an action could, and often would,
41 include a request for relief in addition to recognition, such as a request that the court enforce the
42 judgment or a request for prejudgment relief to preserve assets pending determination of the
43 action. The Draft thus preserves the common law action on the foreign country judgment, and
44 makes it the exclusive way in which to seek recognition of a foreign country judgment as an
45 original matter.

1 At its April, 2004 drafting committee meeting, the Committee considered and ultimately
2 rejected a provision that would alternatively have allowed the recognition issue to be raised
3 through a registration procedure analogous to that provided by the Uniform Enforcement of
4 Foreign Judgments Act for sister-state judgments. The Committee decided that a registration
5 procedure was not appropriate in the context of recognition of foreign country judgments. The
6 Committee concluded that the safeguards that would be required in a foreign country judgment
7 registration procedure in order to adequately protect the judgment debtor would remove most, if
8 not all, of the efficacy of a registration procedure for the judgment creditor.
9

10 A registration procedure represents a balance between the interest of the judgment
11 creditor in obtaining quick and efficient enforcement of a judgment when the judgment debtor
12 has already been provided with an opportunity to litigate the underlying issues and the interest of
13 the judgment debtor in being provided an adequate opportunity to raise and litigate issues
14 regarding whether the foreign country judgment should be recognized. In the context of sister-
15 state judgments, this balance favors use of a truncated procedure such as that found in the
16 Enforcement Act. Recognition of sister-state judgments normally is mandated by the Full Faith
17 and Credit Clause. Courts recognize only a very limited number of grounds for denying full
18 faith and credit to a sister-state judgment – that the rendering court lacked jurisdiction, that the
19 judgment was procured by fraud, that the judgment has been satisfied, or that the limitations
20 period has expired. Thus, the judgment debtor with regard to a sister-state judgment normally
21 does not have any grounds for opposing recognition and enforcement of the judgment. The
22 extremely limited grounds for denying full faith and credit to a sister-state judgment reflect the
23 fact such judgments will have been rendered by a court that is subject to the same due process
24 limitations and the same overlap of federal statutory and constitutional law as the forum state’s
25 courts, and, to a large extent, the same body of court precedent and socio-economic ideas as
26 those shaping the law of the forum state. Therefore, there is a strong presumption of fairness and
27 competence attached to a sister-state judgment that justifies use of a registration procedure.
28

29 The balance between the benefits and costs of a registration procedure is significantly
30 different, however, in the context of recognition and enforcement of foreign country judgments.
31 Unlike the limited grounds for denying full faith and credit to a sister-state judgment, the
32 Recognition Act provides a number of grounds upon which recognition of a foreign country
33 judgment may be denied. Determination of whether these grounds apply requires the court to
34 look behind the foreign country judgment to evaluate the law and the judicial system under
35 which the foreign country judgment was rendered. The existence of these grounds for
36 nonrecognition reflects the fact there is less expectation that foreign country courts will follow
37 procedures comporting with U.S. notions of due process and jurisdiction or that those courts will
38 apply laws viewed as substantively tolerable by U.S. standards. In some situations, there also
39 may be suspicions of unfairness or fraud in the foreign country proceedings. These differences
40 between sister-state judgments and foreign country judgments provide a justification for
41 requiring judicial involvement in the decision whether to recognize a foreign country judgment
42 in all cases in which that issue is raised.
43

44 The Drafting Committee considered whether a registration procedure could be devised
45 that would adequately protect the judgment debtor in the foreign country judgment context while

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

11
12 Two of the main advantages of a registration procedure to the judgment creditor,
13 however, are the ability to provide notice by mail to the judgment debtor in lieu of more formal
14 service of process and to obtain the right to collect on the judgment simply by registering it.
15 Once the Committee determined that these two features must be removed in order to strike an
16 appropriate balance between the interests of the judgment creditor and the judgment debtor in
17 the foreign country judgment context, the Committee concluded that the resulting registration
18 procedure would not be likely to be much more efficient than simply filing an action on the
19 foreign country judgment.

20
21 Further, a registration procedure has at least one significant disadvantage for the
22 judgment creditor – because it does not involve the court, it does not allow the judgment creditor
23 to obtain prejudgment relief. Thus, if a judgment creditor is concerned about assets of the
24 judgment debtor disappearing or otherwise wishes to seek prejudgment relief, the judgment
25 creditor likely will opt for an action on the foreign country judgment even if a registration
26 procedure is available as an alternative.

27
28 For these reasons, the Committee decided at its April, 2004 drafting committee meeting
29 that a registration procedure was not an appropriate means for recognition of foreign country
30 judgments. This Draft thus deletes the provisions of the April Draft dealing with a registration
31 procedure.

32
33 The Committee also briefly considered whether the New York approach, which allows a
34 judgment creditor to bring an action on a foreign country judgment by filing a motion for
35 summary judgment in lieu of complaint, might be adopted. Because the New York approach
36 would involve a rule of civil procedure, it was suggested that this approach would run into
37 enactment difficulties in states in which rules of procedure are adopted by the State Supreme
38 Court rather than by the legislature. Therefore, the Committee decided not to pursue this
39 alternative.

40 41 **SECTION 6. EFFECT OF RECOGNITION OF A FOREIGN COUNTRY**

42 **JUDGMENT UNDER THIS ACT.** If the court in a proceeding under Section 5 of this Act

43 finds that the foreign country judgment is entitled to recognition under this Act, then the foreign

1 country judgment

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

4 (b) is enforceable in the same manner and to the same extent as the judgment of a
5 sister state of the United States that is entitled to full faith and credit.

6 **Reporter's Notes**

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

10
11 The phrase “and to the same extent” has been added to subsection (b) to make it clear
12 that recognition of a foreign country judgment places that judgment on an equal footing with a
13 foreign judgment from a sister state of the United States with regard to its enforcement.
14 Recognition of a foreign country judgment thus still leaves enforcement of the foreign country
15 judgment open to challenge on any ground that would be available to challenge the enforcement
16 of a sister state judgment.

17
18 Former subsection (b) was deleted as unnecessary in light of the Committee’s decision at
19 its April, 2004 drafting committee meeting to delete the draft registration procedure.
20

21 **SECTION 7. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN**
22 **COUNTRY JUDGMENT.** If a party establishes that an appeal from the foreign country
23 judgment is pending or will be taken, the court may stay any proceedings with regard to
24 recognition or enforcement of the foreign country judgment until the appeal is concluded, the
25 time for appeal expires, or the party appealing has had a sufficient period of time to prosecute
26 the appeal and has failed to do so.

27 **Reporter's Notes**

28
29 This section is the same substantively as section 6 of the current Act, except that it adds
30 as an additional measure for the duration of the stay “the time for appeal expires.”
31

32 The reference to “judgment debtor” has been changed to a reference to “a party,” as the

1 party seeking to stay the recognition proceedings may not necessarily be a judgment debtor. For
2 example, if the plaintiff in the foreign country proceedings were denied relief, that party might
3 seek to stay recognition of the foreign country judgment pending appeal of that denial.
4

5 Subsections (b) and (c) of the April Draft have been deleted as unnecessary in light of the
6 Committee's decision to delete the registration procedure.
7

8 SECTION 8. PERIOD OF TIME IN WHICH TO COMMENCE AN ACTION.

9 (a) An action to recognize a foreign country judgment for purposes of having that
10 foreign country judgment enforced by this State must be commenced within the earlier of the
11 time period during which the foreign country judgment may be enforced in the rendering state or
12 fifteen years from the date that the foreign country judgment was entered in the rendering state.

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

17 Reporter's Notes

18
19 The current Act does not contain a statute of limitations. Some courts have applied the
20 state's general statute of limitations, *E.g.*, *Vrozos v. Sarantopoulos*, 552 N.E.2d 1053 (Ill. App.
21 1990) (as Recognition Act contains no statute of limitations, general five-year statute of
22 limitations applies), while others have applied the statute of limitations applicable with regard to
23 enforcement of a domestic judgment, *E.g.*, *La Societe Anonyme Goro v. Conveyor Accessories,*
24 *Inc.*, 677 N.E. 2d 30 (Ill. App. 1997). See Study Report, section III (F)(1).
25

26 The Recognition Act only applies to foreign country judgments that are enforceable
27 where rendered. Thus, if the period of limitations on enforcement has expired in the rendering
28 state, the foreign country judgment would not be subject to the Recognition Act. At its April,
29 2004 drafting committee meeting, the Committee decided that, while the period during which a
30 foreign country judgment may be recognized under this Act normally should be measured by the
31 period during which it is enforceable in the rendering state, when recognition is sought for
32 purposes of enforcement of the foreign country judgment in the forum state, an outer limit of
33 fifteen years should be placed on the ability to bring an action seeking recognition of the foreign
34 country judgment.
35

1 This section only applies to an action seeking recognition for purposes of enforcing the
2 foreign country judgment. It does not apply to recognition of the foreign country judgment for
3 the purpose of giving the foreign country judgment preclusive effect or for the purpose of
4 asserting the foreign country judgment as a setoff.
5

6 **SECTION 9. SAVING CLAUSE.** This Act does not prevent the recognition under
7 principles of comity or otherwise of a foreign country judgment not within the scope of this Act.

8 **Reporter's Notes**
9

10 This section is the same in substance as Section 7 of the current Act. The use of the
11 defined term "foreign country judgment" to mean any judgment of a foreign country, including
12 those not covered by this Act, rather than the defined term "foreign judgment" in Section 7 of
13 the current Act, which was defined as limited to foreign judgments covered by the Act, is
14 intended to resolve the ambiguity noted by courts and commentators as to the meaning of the
15 saving clause. See Study Report, section III (A)(3).
16

17 The section has been rewritten based on comments at the April, 2004 drafting committee
18 meeting.
19

20 **SECTION 10. UNIFORMITY OF INTERPRETATION.** This Act shall be construed
21 in a manner that will effectuate its general purpose to make uniform the law of those states
22 which enact it.

23 **Reporter's Notes**
24

25 This section is the same as Section 8 of the current Act.
26

27 **SECTION 11. SHORT TITLE.** This Act may be cited as the Foreign Country Money
28 Judgments Recognition Act (200_).

29 **Reporter's Notes**
30

31 This section is an updated version of Section 9 of the current Act.
32

33 **SECTION 12. REPEAL.**

1 [The following Acts are repealed:

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

3 (2)

4 (3) .]

5 **Reporter's Notes**

6
7 This section is an updated version of Section 10 of the current Act.

8
9 **SECTION 13. EFFECTIVE DATE.** This Act shall take effect

10 **Reporter's Notes**

11
12 This section is the same as Section 11 of the current Act.