

UNIFORM FOREIGN-MONEY CLAIMS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-EIGHTH YEAR
IN KAUAI, HAWAII
JULY 28 - AUGUST 4, 1989

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Los Angeles, California, February 13, 1990

UNIFORM FOREIGN-MONEY CLAIMS ACT

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UNIFORM FOREIGN-MONEY CLAIMS ACT

PREFATORY NOTE

This Act facilitates uniform judicial determination of claims expressed in the money of foreign countries. It requires judgments and arbitration awards in these cases to be entered in the foreign money rather than in United States dollars. The debtor may pay the judgment in dollars on the basis of the rate of exchange prevailing at the time of payment.

A Uniform Act governing foreign-money claims has become desirable because:

These claims have increased greatly as a result of the growth in international trade.

Values of foreign moneys as compared to the United States dollar fluctuate more over shorter periods of time than was formerly the case.

United States jurisdictions treat recoveries on foreign-money claims differently than most of our major trading partners.

A lack of uniformity among the states in resolving foreign-money claims stimulates forum shopping and creates a lack of certainty in the law.

American courts historically follow one of two different rules in selecting a time during litigation for converting foreign money into United States dollars. These are called the "breach day rule" - the date the money should have been paid - and the "judgment date rule" - when judgment is entered. Many other countries use the "payment day rule" - when the judgment is paid. See *Miliangos v. George Frank (Textiles) Ltd.*, (1976) A.C. 1007. The merits of this approach have begun to be recognized in this country. The payment day rule is endorsed by this Act.

The three rules produce wildly disparate results in terms of making an injured person whole. This is illustrated by the following example:

An American citizen (A) owes 18,790 pounds sterling to a British corporation (BCo) suing in New York, and the pound is falling against the dollar. Due to the declining value of the pound, the three rules worked out as follows:

<u>Date</u>	<u>Rate of Exchange</u>	<u>BCo Gets</u>
Breach day	Pound = \$2.20	\$41,338
Judgment day	Pound = \$1.50	\$28,185
Payment day	Pound = \$1.20	\$22,548

A judgment of \$41,338 may be entered based on the breach day rule. However, the payment in dollars was worth 34,449 pounds (\$41,338 divided by \$1.20) when eventually received, an excess of £15,659 over the actual loss.

This example is adapted from an actual case. See *Comptex v. LaBow*, 783 F.2d 333 (2d Cir. 1986). The facts are simplified.

If conversion is delayed until the date of actual payment, the creditor is recompensed with its own money or the financial equivalent in United States dollars; the debtor bears the risk of a fall in the debtor's money or reaps the benefit of a rise therein. If conversion is made at breach or judgment date, the risk of fluctuation in value of a money not of its selection falls on the creditor.

The real issue is where the risk of exchange rate fluctuation should be placed. This Act recognizes the right of the parties to agree upon the money that governs their relationship. In the absence of an agreement, the Act adopts the rule of giving the aggrieved party the amount to which it is entitled in its own money or the money in which the loss was suffered.

The principle of the Act is to restore the aggrieved party to the economic position it would have been in had the wrong not occurred. Thus, for example, if oil is spilled on the coast of France by an American ship, the loss is felt by the French in francs and a judgment of an American court for damages should reflect this fact. Courts should enter judgments in the money customarily used by the injured person.

The payment day rule, on which the Act is based, meets the reasonable expectations of the parties involved. It places the aggrieved party in the position it would have been in financially but for the wrong that gave rise to the claim. States which adopt it will align themselves with most of the major civilized countries of the world.

The Act also covers other issues that may arise in connection with foreign-money claims. These include revalorization and interest. In order to determine aliquot shares for distributions from funds created in insolvency and estate proceedings, the Act specifies use of the date the distribution proceeding was initiated for conversion of foreign money into United States dollars.

UNIFORM FOREIGN-MONEY CLAIMS ACT

SECTION 1. DEFINITIONS. In this [Act]:

- (1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.
- (2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.
- (3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this [Act], is:
 - (i) paid to a claimant in an action or distribution proceeding;
 - (ii) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
 - (iii) used to recoup, set-off, or counterclaim in different moneys in an action or distribution proceeding.
- (4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.
- (5) "Foreign money" means money other than money of the United States of America.
- (6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim

for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by inter-governmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to Section 4.

(9) "Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(12) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

COMMENT

1. "Action." A suit or arbitration may be legal or equitable in nature, but it must be based on a pecuniary claim.

2. "Bank-offered spot rate" is the rate at which a bank will sell the requisite amount of foreign money for immediate or nearly immediate use by the buyer.

3. "Conversion date." Exchange rates may fluctuate from day to day. A date must be picked for calculating the value of foreign money in terms of United States dollars. As used in the Act, "conversion date" means the day before a foreign-money claim is paid or set-off. The day refers to the time period of the place of the payor, not necessarily that of the recipient. The exchange rate prevailing at or near the close of business on the banking day before the day payment is made will be well known at the time of payment. See Comment 2 to Section 7.

4. "Distribution proceeding." In keeping with the concept underlying Section 2, the coverage of this statute is limited to judicial actions and nonjudicial proceedings which involve the creation of a fund from which pro-rata distributions are made to claimants. As provided in Section 8, a different conversion date is required where either input to or outgo from a fund involves two or more different moneys. Thus, the term includes a mortgage foreclosure proceeding, judicial or under a trust deed, distribution of property in divorce and child support proceedings, distributions in the administration of a trust or a decedent's estate, an assignment for the benefit of creditors, an equity receivership, a liquidation by a statutory successor, a voluntary dissolution of a business or a nonprofit enterprise or the like when in each case a fund must be shared among claimants and where, usually, the fund will not satisfy all claimants of the same class. An asset or a liability of the fund must also involve one or more foreign-money claims, but not all of the claims can be in the same money.

5. "Foreign money." Since only the federal government has the power to coin money and regulate the value thereof, the term "foreign" means a government other than that of the United States of America. Special Drawing Rights of the International Monetary Fund are foreign money even though the United States is a member of the Fund. Foreign governments included are all those whose moneys are, in the currency markets of the world, exchangeable for the money of other currencies even though the government is not recognized by the United States.

6. "Foreign-money claim." The term "claim" is not limited to any one party to an action or a distribution proceeding and may be asserted by a plaintiff or a defendant or by a party to an arbitration or distribution proceeding. It may be based on a foreign judgment, or sound in contract, quasi-contract, or tort.

7. "Money." The definition includes composite currencies such as European Currency Units created by agreement of the governments that are members of the European Monetary System or the Special Drawing Rights created under the auspices of the International Money Fund. These are "stores of value" used to determine the quantity of payment in some international transactions.

8. "Money of the claim." See Section 4 and the Comment thereto.

9. "Party." This combines the Uniform Commercial Code's definitions of "person" and

"organization," but is limited to those who are parties to transactions or involved in events which could give rise to a foreign-money claim.

10. "Rate of Exchange." A free market rate is to be used rather than an official rate if both exist. Some countries have transactional differences in exchange rates with slightly different rates; for example, in Belgium one rate prevails for commercial and another for financial transactions. Both rates are recognized in money market transactions. The last sentence of the definition indicates that the rate appropriate to the transaction is the rate to be used.

11. "Spot rate" is the term used in the financial markets of the United States for the rate of exchange for immediate or nearly immediate transfers from one money to another, as distinguished from the rates for future options or future deliveries.

In the foreign exchange markets, as in the stock markets, quotations are either "bid" or "ask," and the spread between is where the dealer makes a profit. An "offered spot rate" is the rate at which the offeror will sell the particular money. It is, of course, higher than the rate at which that person will buy the same money. "Spot" refers to the time the trade is made, not the time for settlement, which in spot transactions is often two days after the date of the trade.

12. "State." The definition, as in other Uniform Laws, is extended to include areas given the same, or nearly the same, treatment in law as the states.

SECTION 2. SCOPE.

- (a) This [Act] applies only to a foreign-money claim in an action or distribution proceeding.
- (b) This [Act] applies to foreign-money issues even if other law under the conflict of laws rules of this State applies to other issues in the action or distribution proceeding.

COMMENT

Under the rules of the conflict of laws, the determination of when a foreign money is converted to United States dollars is generally considered a procedural matter for the law of the forum. Subsection (b) removes any doubt.

SECTION 3. VARIATION BY AGREEMENT.

- (a) The effect of this [Act] may be varied by agreement of the parties made before

or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

COMMENT

1. A basic policy of the Act is to preserve freedom of contract and to permit parties to resolve disputed matters by contract at any time, even as to choice of law problems. The parties may agree upon the date and time for conversion. After entry of judgment the parties may agree upon how the judgment is to be satisfied.

2. Subsection (b) covers cases where, for example, claims for petroleum may be settled in United States dollars but settlement for joint costs of exploration may be in pounds sterling. The parties also may agree on the money to be used for damages. The second sentence recognizes that a price stated in a particular money does not indicate, without more evidence, an intent that all damages from breach are to be in the same money. The principle of freedom of contract allows the parties to allocate the risks of currency fluctuations between foreign moneys as they desire. Sections 4 and 5 provide rules in the absence of special agreements by the parties for determining the money to be used. Parties may by agreement select a particular market or foreign exchange dealer to be used for exchange purposes.

SECTION 4. DETERMINING MONEY OF THE CLAIM.

(a) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) regularly used between the parties as a matter of usage or course of dealing;

(2) used at the time of a transaction in international trade, by trade usage or

common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) in which the loss was ultimately felt or will be incurred by the party claimant.

COMMENT

1. Subsection (a) uses "payment" in a broad sense not related to just the price, but to any obligation arising out of a contract to transfer money. See also Section 3(b).

2. Subsection (b) states rules to fill gaps in the agreement of the parties with rules as to the allocation of risks of fluctuations in exchange rates. The three rules will normally apply in the order stated. Prior dealings may indicate the desired money. If there are none, it is appropriate to use the money indicated by trade usage or custom for transactions of like kind. The final rule of subsection (a) is one established in English cases. See *The Despina R and the Folias*, (1979) A.C. 685. An example is the use of an operating account in United States dollars by a French company to buy Japanese yen for ship repairs; the loss is felt in the depletion of the dollar bank account. Appropriateness of a rule is to be determined by the judge from the facts of the case. See Section 6(d).

SECTION 5. DETERMINING AMOUNT OF THE MONEY OF CERTAIN CONTRACT CLAIMS.

(a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable because the

agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

COMMENT

1. Subsections (a) and (b) cover different interpretation problems. One arises where the amount of the money to be paid is measured by another money, one of which is foreign. An example is "pay 5,000 Swiss francs in pounds sterling." The issue is the time at which the rate of exchange into pounds sterling is to be applied. Subsection (a) says in a "measured by" situation with no rate specified, the rate of exchange that controls is the one prevailing at or near the close of business on the day before the day of payment. See Section 1(2), the definition of "conversion date."

2. Another problem arises when an exchange rate in effect before a default is used, as in "pay on November 30, 1989, 5,000 Swiss francs in pounds sterling at the exchange rate prevailing on June 30, 1989." In this case, the issue is how long does the specified exchange rate control in the absence of a clear expression of intent?

Inclusion of a fixed rate as of a date before default, under subsection (b), remains effective only if payment is made within a reasonable time after default, not to exceed 30 days. The 30-day limitation accords usually with the expectation of the parties. Parties may agree to a longer time.

3. The most common application of subsection (c) will be found in international loan transactions. For example, a loan by a Japanese bank to an American company could be made with dollars purchased by yen for the purpose. The loan agreement could provide for repayment in dollars of an amount which, when received by the lender, would repurchase the amount of yen used to acquire the dollars advanced.

An exemption is needed from the application of usury laws that may be interpreted to hold that the indexing of the principal amount creates additional interest. See *Aztec Properties, Inc. v. Union Planters National Bank*, 530 S.W.2d 756 (Tenn. Sup. Ct. 1975). The subsection removes all doubts as to the legal enforceability of such agreements under theories such as usury, merger in a judgment, unconscionability, or the like.

SECTION 6. ASSERTING AND DEFENDING FOREIGN-MONEY CLAIM.

- (a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.
- (b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.
- (c) A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.
- (d) The determination of the proper money of the claim is a question of law.

COMMENT

1. Subsection (a) covers not only the claim of a plaintiff but also the assertion by a defendant of a defense, set-off, or counterclaim. Subsection (b) provides that the money asserted as the money of its defenses by the defendant need not be the same as that of the plaintiff.
2. The money to be used as the money of the claim is a threshold issue to be determined, if contested, by the court after any factual issues as to expenditures, custom, usage, or course of dealing are decided. See subsection (b). If a payment is made or a debt incurred in a money other than that in which the loss was felt, the party asserting the foreign-money claim should establish the amount of the money of the claim used to procure the money of expenditure and the applicable exchange rate used.
3. Judgments may be entered in more than one money when dealings impact on more than one area. An inn-keeper in Mexico, for example, in taking in customers from many countries, should be held to foresee that treatment for injuries at the inn would occur not only in Mexico, but also in the native land of the injured party or in a third country.

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS;

TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.

- (a) Except as provided in subsection (c), a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.
- (b) A judgment or award on a foreign-money claim is payable in that foreign

money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

- (c) Assessed costs must be entered in United States dollars.
- (d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.
- (e) A judgment or award made in an action or distribution proceeding on both (i) a defense, set-off, recoupment, or counterclaim and (ii) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

- (f) A judgment substantially in the following form complies with subsection (a):

[IT IS ADJUDGED AND ORDERED, that Defendant

 (insert name) pay to Plaintiff
 (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 9) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.]

[Note: States should insert their customary forms of judgment with appropriate modifications.]

- (g) If a contract claim is of the type covered by Section 5(a) or (b), the judgment

or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment must be [filed] [docketed] [recorded] and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

COMMENT

1. Subsection (a) changes a number of statutes in the states which can be construed to require all values in legal proceedings to be expressed in United States dollars. Professor Brand, in his article in the Yale Journal of International Law, Vol. 11:139 at page 169, identified 18 states having statutes which could require all judgments to be entered in dollars. They are Arkansas, California, Idaho, Iowa, Louisiana, Maryland, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Brand, *ibid.* fn. 166. Hence, direct statutory authority must be given the courts in those states, and will be helpful in other states. In some states other statutes may need amendments. See, e.g., Wisc. Stats. §§ 138.01, 138.02, 138.03, and 779.05.

2. Subsection (d) gives defendants the option of paying in dollars which are, at the payment date, practically the economic equivalent of the foreign money awarded. The judgment creditor should be indifferent to whether the debtor exercises the right to pay in dollars as the only difference is a small bank charge for exchanging the dollars for the foreign money. The concept of the rate of the banking day next before the payment day is taken from Section 131 of the Province of Ontario, Canada, Courts of Justice Act (Ch. 11 Ont. Stats. (1984) as recently amended). It gives the defendant and the sheriff conducting the sale the necessary conversion rate comfortably ahead of its use. Newspaper quotations are usually said to be "at or near the close of business" on the stated date, so that phrase is used in this Act.

3. Subsection (e) provides for netting the affirmative recoveries of a defendant and plaintiff, whether in the same money or in different moneys, but preserving the quantum of each for appellate purposes. The theory is that when claims are reduced to money, they become mutual debts and should be set-off, so that a person's exchange rate fluctuation risk continues only for the surplus in its money of the claim. The set-off is made by the judge or arbitrator.

4. The form of judgment in subsection (f) should be varied appropriately where the money to be paid is measured by a foreign money. See Section 5.

SECTION 8. CONVERSIONS OF FOREIGN MONEY IN DISTRIBUTION

PROCEEDING. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

COMMENT

All claims must be in the same money when determining aliquot shares in a distribution proceeding. The Act requires use of the date the proceeding was initiated for applying the exchange rate to convert foreign-money claims into United States dollars. See *Re Lines Bros. Ltd.*, (1982) 2 All E.R. 99. A claim may be amended to show the proper conversion rate and the proper amount of United States dollars.

SECTION 9. PRE-JUDGMENT AND JUDGMENT INTEREST.

(a) With respect to a foreign-money claim, recovery of pre-judgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (b), are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this State.

(b) The court or arbitrator shall increase or decrease the amount of pre-judgment or pre-award interest otherwise payable in a judgment or award in foreign-money to the extent required by the law of this State governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this State.

COMMENT

1. As to pre-judgment interest, the Act adopts the majority rule in the United States that pre-judgment interest follows the substantive law of the case under conflict of laws rules, both as to the right to recover and the rate. English courts use a different rule, *i.e.*, the borrowing rate used by plaintiff or prevailing in the country issuing the money of the judgment. See *Helmsing Schiffarts G.M.B.H. v. Malta Drydock Corp.* (1977) 2 Lloyd's Rep. 44 (Maltese money but borrowed in West Germany; German rate); *Miliangos v. George Frank (Textiles) Ltd. (No. 2)* (1976) 1 QB 487 at 489 (Swiss money, Swiss interest rate). Although pre-judgment interest is one form of damages, provision for pre-judgment interest is not to be taken as indicating that no other damages for delay in payment can be awarded under the substantive law applicable to the determination of damages. Cf. *Isaac Naylor & Sons, Ltd. v. New Zealand Co-operative Wool Marketing Association, Ltd.* (1981) 1 N.Z.L.R. 361 (exchange loss due to delay as additional damages).

2. Allowances of pre-judgment interest in some states depend upon a party's conduct with respect to settlement or delay of the proceeding. Subsection (b) treats these state laws as either procedural in nature or expressions of a significant policy, in either case to be governed by the law of the forum state.

3. Interest on a judgment is considered to be procedural and also goes by the law of the forum. There is a problem here in that there is great discrepancy among the states in the rates for judgment interest. When a judgment is in a foreign money, United States interest rates may result in some overcompensation or undercompensation as compared to what would be awarded in the jurisdiction issuing the foreign money. But in both the United States and in foreign countries, most jurisdictions have fixed statutory rates that do not readily respond to the inflation or deflation of the value of their money in the world market. Hence it was decided to apply the usual rules of the conflict of laws.

SECTION 10. ENFORCEMENT OF FOREIGN JUDGMENTS.

(a) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this State as enforceable, the enforcing judgment must be entered as provided in Section 7, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be [filed] [docketed] [recorded] in accordance with any rule or statute of this State providing a procedure for its recognition and enforcement.

(c) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this State.

(d) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this State in United States dollars only.

COMMENT

1. Some states have special acts that simply cover the recognition, entry, and enforcement of foreign judgments. Common law enforcement is by action. Subsection (a) refers to the common law method; it is subject to subsection (b) which refers to statutory procedures. Subsection (c) applies to both procedures.

2. Subsection (d) avoids constitutional issues under the full faith and credit clause by requiring that judgments of sister states be enforced as entered in the sister state.

SECTION 11. DETERMINING UNITED STATES DOLLAR VALUE OF FOREIGN-MONEY CLAIMS FOR LIMITED PURPOSES.

(a) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (c) and (d).

(c) A party seeking process, costs, bond, or other undertaking under subsection

(b) shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(d) A party seeking the process, costs, bond, or other undertaking under subsection (b) shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

COMMENT

This section protects those who must determine how much should be held subject to a levy or other collection process or what the dollar amount of a supersedeas or other surety bond should be. If the judgment debtor is damaged by a gross overstatement of the dollar amount in the affidavit or certificate of counsel for the judgment creditor or the bank officer, recovery should be against that person.

SECTION 12. EFFECT OF CURRENCY REVALORIZATION.

(a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a

like conversion of the former money.

COMMENT

1. Subsection (a) refers to situations in which a country authorizes the issue of a new money to take the place of the old money at a stated ratio. An example is Brazil's recent abolition of cruzieros for cruzados. The subsection mandates that foreign money claims should be subjected to the same ratio.

2. The Act takes no position on the effect of money repudiations or revalorizations so drastic as to be, in effect, confiscations. Remedy, if any, for these is usually found through diplomatic channels. Equally, the Act takes no position on the effect of exchange control laws. The effect, if any, on obligations to pay is left to other law.

SECTION 13. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW. Unless displaced by particular provisions of this [Act], the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

COMMENT

The section is taken from Section 1-103 of the Uniform Commercial Code.

SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 15. SHORT TITLE. This [Act] may be cited as the Uniform Foreign-Money Claims Act.

SECTION 16. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 17. EFFECTIVE DATE. This [Act] becomes effective on January 1st following its enactment.

SECTION 18. TRANSITIONAL PROVISION. This [Act] applies to actions and distribution proceedings commenced after its effective date.

[**SECTION 19. REPEALS.** The following acts and parts of acts are repealed:

- (1) [Any statute requiring judgments to be entered in United States dollars.]
- (2) _____.
- (3) _____.]