

DRAFT

FOR DISCUSSION ONLY

**AMENDMENTS TO THE UNIFORM FOREIGN
MONEY JUDGMENTS RECOGNITION ACT**

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

WITH REPORTER'S NOTES

**DRAFTING COMMITTEE MEETING
APRIL 23 – 25, 2004
CHICAGO, ILLINOIS**

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By

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

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April 14, 2004

**AMENDMENTS TO THE UNIFORM FOREIGN MONEY JUDGMENTS
RECOGNITION ACT**

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**AMENDMENTS TO THE UNIFORM FOREIGN MONEY JUDGMENTS
RECOGNITION ACT**

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1 **AMENDMENTS TO THE UNIFORM FOREIGN MONEY JUDGMENTS**

2 **RECOGNITION ACT**

3
4 **SECTION 1. [Definitions.]**

5 As used in this Act:

6 (a) “Foreign country” means any governmental unit, other than the United States,
7 a state of the United States, or a district, commonwealth, territory, including a trust territory,
8 possession or other governmental unit under the official control of the United States.

9 (b) “Foreign country judgment” means any judgment of a court of a foreign
10 country.

11 (c) “Judgment debtor” means a person against whom a foreign country judgment
12 for a sum of money has been entered.

13 **Reporter’s Notes**

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

28
29 The definition of “foreign country” is similar to, but more generic than, the definition of
30 “foreign state” in the current Act, which defines a “foreign state” as “any governmental unit other
31 than the United States, or any state, district, commonwealth, territory, insular possession thereof,

1 or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands.”
2 Several states have nonuniform amendments to the current Act providing a more generic
3 definition.
4

5 The definition of “foreign country judgment” differs significantly from the current Act’s
6 definition of “foreign judgment.” The current Act’s definition serves in large part as a scope
7 provision for the Act. The part of the definition defining the scope of the Act has been moved to
8 the section 2, which is the scope section. Unlike the definition of “foreign judgment,” the
9 definition of “foreign country judgment” refers to judgments of “a court” of the foreign country.
10

11 The definition of “judgment debtor” has been added to clarify the meaning of that term as
12 it is used in other sections of the Act.
13

14 See generally the discussion in section III(A) of the Study Report.
15

16 **SECTION 2. [*Scope of the Act.*]**

17 (a) Except as provided in subsection (c), this Act applies to any foreign country judgment
18 that

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

20 (2) is final; and

21 (3) is conclusive and enforceable where rendered.

22 (b) This Act applies even though an appeal from the foreign country judgment is pending
23 or the foreign country judgment is subject to appeal.

24 (c) This Act does not apply to a foreign country judgment that is

25 (i) a judgment for taxes;

26 (ii) a fine or other penalty; or

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

29 (d) The party seeking to have a foreign country judgment recognized has the burden of

1 establishing that the foreign country judgment meets the requirements of this section.

2 **Reporter’s Notes**

3
4 This section is based on Section 2 of the current Act. Subsection (c) contains material that
5 formerly was included as part of the definition of “foreign judgment.” See Study Report, section
6 III (A) (3).

7
8 The domestic relations exclusion has been redrafted to make it clear that all judgments in
9 domestic relations matters are excluded from the Act, not just judgments “for support” as
10 provided in the current Act. See Study Report, section III (A) (4).

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

23
24
25 **SECTION 3. [*Standards for Recognition of a Foreign Country Judgment.*]**

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

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

29 (1) the judgment was rendered under a judicial system which does not provide
30 impartial tribunals or procedures compatible with the requirements of due process of law;

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

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

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

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

3 (2) the judgment was obtained by extrinsic fraud;

4 (3) the judgment or the [cause of action] [claim for relief] on which the judgment
5 is based is repugnant to the public policy of this State or of the United States;

6 (4) the judgment conflicts with another final and conclusive judgment;

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

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

12 [(7) the judgment was rendered in circumstances that raise substantial and
13 justifiable doubt about the integrity of the rendering court with respect to the judgment in
14 question.]

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

17 **Reporter's Notes**

18
19 This section is based on Section 4 of the current Act, and is the same in substance, except
20 as noted below. For the general context of these amendments, see Study Report, section III (D),
21 and particularly, section III (D)(3).
22

23 Subsection (c)(2) changes “fraud” from the current Act to “extrinsic fraud” to clarify the
24 type of fraud required. Courts interpreting this provision have found that only extrinsic fraud —
25 conduct of the prevailing party that deprived the losing party of an adequate opportunity to
26 present his case — is sufficient. See Study Report, Section III (D).
27

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

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

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

1 Subsection (d) allocates the burden of proof on the issue of nonrecognition to the party
2 opposing recognition of the foreign judgment. Current section 4 is silent as to who has the
3 burden of proof. Courts have taken different positions on the issue. Some courts, including the
4 New York courts, hold that the person seeking recognition has the burden of establishing the
5 nonexistence of the mandatory grounds for nonrecognition, while the person resisting recognition
6 has the burden of establishing the existence of one of the nonmandatory grounds, *E.g.*,
7 *Bridgeway Corp. v. Citibank*, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (Plaintiff has burden to
8 show no mandatory basis under 4(a) for recognition exists; defendant has burden regarding
9 nondiscretionary bases); *S.C.Chimexim S.A. v. Velco Enterprises, Ltd.*, 36 F.Supp.2d 206, 212
10 (S.D.N.Y. 1999) (burden of proof is on plaintiff regarding mandatory requirements and on
11 defendant regarding discretionary requirements); *Dresdner Bank, AG v. Haque*, 161 F.Supp.2d
12 259, 263 (S.D.N.Y. 2001) (plaintiff has burden of proof no mandatory ground for
13 nonrecognition exists; defendant has burden of proof to establish that a discretionary basis for
14 nonrecognition applies); *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1005
15 (5th Cir. 1990) (discretionary grounds are phrased as affirmative defenses and thus burden of
16 proof regarding them is on the defendant). Other courts hold that the person resisting recognition
17 has the burden of proof with regard to both mandatory and discretionary grounds for
18 nonrecognition. *E.g.*, *Kam-Tech Systems, Ltd. V. Yardeni*, 774 A.2d 644, 649 (N.J. App. 2001)
19 (burden of proof to establish ground for nonenforcement should be on party asserting the ground,
20 though burden might be shifted when fundamental fairness warrants it, as, for example, when the
21 information about the foreign proceeding is peculiarly within the knowledge or control of the
22 party seeking enforcement or is inordinately burdensome for the opponent to obtain); *The*
23 *Courage Co. LLC v. The ChemShare Corp.*, 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking
24 to avoid recognition has burden to prove ground for nonrecognition); *Dart v. Balaam*, 953
25 S.W.2d 478, 480 (Tex. App. 1997) (burden is on the defendant regarding all grounds for
26 nonrecognition); *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317, 320 (5th
27 Cir. 1999) (court must recognize judgment unless judgment debtor establishes one of the ten
28 specific grounds for nonrecognition). See Study Report, section III (D)(4). For purposes of
29 Committee discussion, this draft adopts the latter position.
30
31

32 SECTION 4. [*Personal Jurisdiction.*]

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

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

36 (2) the defendant voluntarily appeared in the proceedings, other than for the
37 purpose of protecting property seized or threatened with seizure in the proceedings or of

1 contesting the jurisdiction of the court over the defendant

2 (3) the defendant prior to the commencement of the proceedings had agreed to
3 submit to the jurisdiction of the foreign court with respect to the subject matter involved;

4 (4) the defendant was domiciled in the foreign country when the proceedings were
5 instituted or was a corporation that had its principal place of business, was incorporated, or had
6 otherwise acquired corporate status in the foreign country;

7 (5) the defendant had a business office in the foreign country and the proceedings
8 in the foreign court involved a [cause of action] [claim for relief] arising out of business done by
9 the defendant through that office in the foreign country; or

10 (6) the defendant operated a motor vehicle or airplane in the foreign country and
11 the proceedings involved a [cause of action] [claim for relief] arising out of such operation.

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

15 **Reporter's Notes**

16
17 The substance of this section is the same as section 5 of the current Act. See Study Report,
18 section III (E).

19 20 21 **SECTION 5. [*Procedure for Recognition of a Foreign Country Judgment.*]**

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

24 (b) If recognition of a foreign country judgment is sought as an original matter, the issue
25 of recognition may be raised

1 (1) by filing an action on the foreign country judgment; or

2 (2) by registration of the foreign country judgment as provided in Section 6.

3 **Reporter's Notes**

4
5 The most troublesome interpretative issues that have arisen with regard to the current Act
6 are those relating to the appropriate procedure for making the determination as to whether to
7 recognize a foreign country judgment. The current Act is silent on this question. At common
8 law, a foreign judgment, whether of a state or of a foreign country, was recognized and enforced
9 by bringing an action on the foreign judgment in the courts of the state where recognition and
10 enforcement was sought to have the foreign judgment domesticated. Once domesticated, the
11 judgment was treated as a judgment of the state in which the action to domesticate the judgment
12 was filed. The issue of recognition and enforcement of foreign country judgments under the
13 current Act still is most often raised by bringing an action on the foreign country judgment, and
14 the current Act has worked fairly smoothly when the issue of recognition is raised in the context
15 of such an action.

16
17 With regard to sister state judgments, however, the registration procedure provided by the
18 Uniform Enforcement of Foreign Judgments Act is available in most states. That Act allows a
19 judgment creditor to obtain enforcement of a sister state judgment simply by filing an
20 authenticated copy of the judgment in the clerk's office in the forum state. By its terms, the
21 Enforcement Act only applies to sister state judgments, and, therefore, its provisions do not
22 provide for raising or determination of issues relating to recognition of a foreign judgment. With
23 regard to sister state judgments, recognition is mandated by the Full Faith and Credit clause.
24 Nevertheless, some courts have held that its registration procedure can be utilized with regard to
25 a foreign country judgment without any separate determination of whether the foreign country
26 judgment is entitled to recognition under the Act. *E.g.*, *Society of Lloyd's v. Ashenden*, 233 F.3d
27 473 (7th Cir. 2000). Other courts have held (correctly, it would seem) that the Enforcement Act
28 only applies to enforcement of foreign judgments and, therefore, at best would be available as a
29 means of enforcement of a foreign country judgment only after a separate proceeding had made
30 the determination that the foreign country judgment was entitled to recognition. *E.g.*,
31 *Matusevitch v. Telnikoff*, 877 F.Supp. 1 (D.D.C. 1995); *Hennessy v. Marshall*, 682 S.W.2d 340
32 (Tex. App. 1984). In fact, the lack of any procedure for raising defenses to recognition, as
33 opposed to defenses to enforcement, under the Uniform Enforcement of Foreign Judgments Act
34 has led some courts to find that if the Recognition Act is interpreted to authorize the use of the
35 Enforcement Act as the means for determining whether a foreign country judgment should be
36 recognized as well as enforced, then the Recognition Act is unconstitutional as applied when the
37 Enforcement Act is the procedure used because the party opposing recognition is denied notice
38 and a hearing with regard to issues related to recognition of the foreign country judgment. *E.g.*,
39 *Detamore v. Sullivan*, 731 S.W.2d 122 (Tex. App. 1987); *Plastics Engineering Inc. v. Diamond*
40 *Plastics Corp.*, 764 S.W. 2d 924 (Tex. App. 1989). (In *Don Dockstader Motors, Ltd. v. Patal*
41 *Enterprises, Ltd.*, 794 S.W. 2d 760 (Tex. 1990), the Texas Supreme Court disapproved of the

1 decisions in *Detamore* and *Plastics Engineering* to the extent those decisions were in conflict
2 with its decision that the current Act was constitutional when the procedure for recognition and
3 enforcement was the filing of an action on the judgment rather than use of the Enforcement Act
4 procedure; because the *Detamore* and *Plastics Engineering* decisions were based specifically on
5 use of the Enforcement Act rather than an action on the judgment, however, their core rationale
6 apparently remains intact.)

7
8 Some states have nonuniform amendments to the current Act that provide for a
9 recognition and enforcement procedure. New York, for example, provides that a foreign country
10 judgment is enforceable “by an action on the judgment, a motion for summary judgment in lieu
11 of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.”
12 Florida has a nonuniform amendment creating a registration procedure in which issues of
13 recognition may be raised.

14
15 For further discussion of these issues, see Study Report, section III (C).

16
17 This section explicitly sets out the ways in which the issue of recognition may be raised.
18 It contemplates that recognition may come up in the context of a pending proceeding (usually,
19 although not always, because one of the parties wants to assert the preclusive effect of the
20 foreign country judgment) or as an original matter. When the issue of recognition is raised as an
21 original matter, this section preserves the common law action on the judgment, but also allows
22 the recognition issue to be raised through the registration procedure set out in section 6.

23
24
25 **SECTION 6. [*Registration of a Foreign Country Judgment.*]**

26 (a) A judgment creditor seeking to have a foreign country judgment recognized and
27 enforced against assets of the judgment debtor located in this State may file with the clerk of [
28 any District Court of any city or county] of this State in which assets of the judgment debtor are
29 located

30 (1) a certified copy of the foreign country judgment;

31 (2) a certified translation of the foreign country judgment into English, if the
32 original judgment was not issued in English; and

33 (3) a sworn affidavit of the judgment creditor stating:

34 (A) the name and last known mailing address of the judgment debtor, and

1 of the judgment debtor's attorney, if known;

2 (B) the name and address of the judgment creditor and of the judgment
3 creditor's attorney in this State or in the United States, if any;

4 (C) an address within the United States at which the judgment creditor
5 may be contacted;

6 (D) that the foreign country judgment is final, conclusive and enforceable
7 in the jurisdiction in which it was rendered;

8 [(E) that the foreign country judgment was not rendered in lieu of
9 appearance or failure to defend on the merits;]

10 (F) that the foreign country judgment has not been satisfied; and

11 (G) that the judgment debtor has insufficient assets in the country in which
12 the judgment was rendered to satisfy the foreign country judgment, or that the judgment debtor
13 has taken steps to conceal assets in the rendering country.

14 (b) Promptly upon the filing of the foreign country judgment and documentation required
15 by subsection (a), the Clerk of Court shall

16 (1) note the filing of the foreign country judgment in the docket in which
17 proceedings to recognize foreign judgments are filed;

18 (2) mail by registered mail, return receipt requested, [or comparable means] notice
19 of filing of the foreign country judgment, together with a copy of the foreign country judgment
20 and other documentation required by subsection (a), to the judgment debtor at the address given
21 in the judgment creditor's affidavit with a copy to the judgment debtor's attorney if the address
22 of an attorney is provided; and

1 (3) note the mailing in the docket.

2 (c) The judgment creditor also may

3 (1) mail by registered mail, return receipt requested, a notice of filing of the
4 foreign country judgment, together with a copy of the foreign country judgment and other
5 documentation required by subsection (a), to the judgment debtor and to the judgment debtor's
6 attorney if the address of an attorney is known; and

7 (2) file proof of mailing with the Clerk of Court.

8 (d) Failure of the Clerk of Court to comply with the requirements of subsection (b) will
9 not affect the recognition proceedings if the judgment creditor has complied with the
10 requirements of subsection (c), including filing proof of mailing with the clerk of court.

11 (e) The judgment debtor shall have 45 days after service of notice of filing of the foreign
12 judgment in which to file a notice of objection with the Clerk of Court specifying grounds for
13 nonrecognition or nonenforcement of the judgment. The notice of objection may raise as
14 grounds for refusing to register the foreign country judgment:

15 (1) the grounds for nonrecognition provided in section 3 of this Act; and

16 (2) any grounds that would be available to refuse recognition or enforcement of a
17 judgment of a sister state of the United States in this State.

18 (f) If the judgment debtor files a notice of objection under subsection (e), then upon
19 application of either party, and after proper notice, the [District Court] shall have jurisdiction to
20 conduct a hearing, determine the issues, and enter an appropriate order granting or denying
21 recognition and enforcement of the foreign country judgment.

22 (g) If the judgment debtor does not file a notice of objection within 45 days after service

1 of notice of filing of the foreign judgment, then the Clerk of Court shall record a certificate
2 stating that no objection has been filed to recognition or enforcement of the foreign country
3 judgment in the docket.

4 (h) Upon entry of an order recognizing the foreign judgment and finding it enforceable in
5 this State, or upon recording of the Clerk's certificate in accordance with subsection (g), the
6 foreign judgment shall have the effect stated in Section 7 of this Act.

7 (i) Any person filing a foreign country judgment under this procedure shall pay the Clerk
8 of Court a filing fee of \$_____. Fees for docketing, transcription or other enforcement
9 proceedings shall be as provided for judgments of the [District Court of any city or county] of
10 this State.

11 **Reporter's Notes**

12
13 As discussed in the Reporter's Notes to Section 5, and Section III (C) of the Study
14 Report, the failure of the current Act to explicitly provide a procedure for recognition of foreign
15 country judgments has proved problematic. Section 5 lists the procedures by which recognition
16 of a foreign country judgment may be obtained. One of those procedures is the registration
17 procedure provided for in this section.

18
19 Initially, the Committee must consider the policy question of whether a registration
20 procedure such as that provided here is appropriate in the context of the recognition and
21 enforcement of foreign country judgments, or whether the courts should always be involved
22 when recognition of a foreign country judgment is sought. The balance between the benefits and
23 the costs of a registration procedure in the foreign country judgment context is different than
24 when considering a registration procedure with regard to sister state judgments. Recognition of
25 sister state judgments normally is mandated by the Full Faith and Credit Clause. Courts
26 recognize only a very limited number of grounds for denying full faith and credit to a sister state
27 judgment — that the rendering court lacked jurisdiction, that the judgment was procured by
28 fraud, that the judgment has been satisfied, or that the limitations period has expired. Thus,
29 recognition of sister state judgments usually is not an issue. On the other hand, Section 4 of the
30 current Act and Section 3 of this draft set out a number of grounds for denying recognition to a
31 foreign country judgment. Determination of whether any of these grounds applies involves
32 looking behind the foreign country judgment to evaluate the law and the judicial system under
33 which it was rendered.

1 In *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F.Supp. 885 (N.D. Tex. 1980), the court
2 explained the different cost- benefit analysis involved when considering recognition and
3 enforcement of a foreign country judgment as opposed to that of a sister state. Recognition and
4 enforcement of foreign judgments (whether sister-state or foreign country) prevents harassment
5 of the successful party, eliminates duplicative judicial proceedings, and provides a measure of
6 settled expectations to the parties. In the domestic context, however, the courts of each state are
7 subject to the same due process limits and the same overlap of federal statutory and constitutional
8 law, and share to a large extent the same body of court precedent and socio-economic ideas; thus,
9 there is a presumption of fairness and competence. In the sister-state context, therefore, the
10 benefits of giving conclusive effect to foreign judgments are not balanced by any obvious costs.
11 Conclusive effect for sister state judgments can be fully justified on the basis of fairness to the
12 litigants and judicial economy; there is no reason for a second trial, as the rendering forum had at
13 least the constitutionally required contacts with the litigants, there is little possibility of error in
14 the rendering forum, and the substantive policies effectuated by that forum are likely to be fully
15 acceptable to the recognizing forum. The cost-benefit calculus for automatic exclusive effect is
16 far less favorable, however, when considering foreign country judgments. There is less
17 expectation that foreign courts will follow procedures comporting with U.S. notions of due
18 process and jurisdiction or that they will apply substantively tolerable laws, and there may be
19 suspicions of unfairness or fraud. These differences may warrant judicial involvement in the
20 decision whether to recognize foreign country judgments in all cases in which that issue is raised.
21 See Study Report, section III (C).

22
23 In addition, it is possible to provide for expedited recognition procedures without
24 resorting to a registration system. New York, for example, provides that the issue of recognition
25 and enforcement of a foreign country judgment may be raised by filing a motion for summary
26 judgment in lieu of complaint. This procedure is more truncated than the traditional common
27 law action on the judgment, but still requires the participation of the court in every decision
28 regarding recognition of a foreign country judgment.

29
30 This section sets forth a registration procedure to give the Committee some idea as to
31 what such a procedure might involve. This section is based primarily on the Florida nonuniform
32 amendment establishing a registration procedure under the current Act, the Uniform Enforcement
33 of Foreign Judgments Act and the registration procedure in the ALI International Jurisdiction and
34 Judgments Project. A registration procedure for the recognition of foreign country judgments
35 must balance the desire of the judgment creditor to obtain expedited recognition and enforcement
36 of its judgment and the need of the judgment debtor to be provided an adequate opportunity to
37 raise and litigate issues regarding whether the foreign country judgment should be recognized.
38 The primary protection provided the judgment debtor under this section is the fact that
39 registration of the foreign country judgment has no effect for 45 days after notice of registration
40 of the judgment is sent to the judgment debtor. If no objection is received from the judgment
41 debtor within the 45 day period, then the judgment will be recognized and becomes enforceable
42 against the debtor upon entry by the clerk of court of a certification indicating that no objection
43 was filed. If the debtor does object, then the matter is referred to the court, and the proceeding

1 becomes comparable to an action on the foreign country judgment.
2

3 Although the primary focus of this registration procedure is to provide a means for having
4 the foreign country judgment recognized, the procedure also contemplates that the issue of
5 enforceability of the judgment will be determined as well. Subsection (e) provides that the
6 debtor may raise issues relating to enforceability of the judgment as well as the grounds for
7 nonrecognition stated in the Act, and subsection (h) contemplates that the court order or
8 certification will determine the issue of enforceability as well as the issue of recognition.
9

10 Subsection (a)(E) has the effect of limiting the ability to use the registration procedure to
11 foreign country judgments that were not entered by default. Section 10 of the ALI International
12 Jurisdiction and Judgments Project expressly limits the use of its proposed registration procedure
13 to judgments that were not entered by confession of judgment or by default. The current Act
14 does not distinguish between default and other judgments, but it also does not include procedures
15 for recognition. The Uniform Enforcement of Foreign Judgments Act also does not exclude
16 default judgments. The rationale for excluding default judgments from the scope of the
17 registration section is that a registration procedure assumes that a court has heard both sides to
18 the dispute and made a final determination so that all that remains is the issue of collection.
19 Default judgments do not meet this standard. If default judgments could be recognized and
20 enforced under the registration procedure, then the foreign country judgment could be entered,
21 recognized and enforced without any participation at any stage by the defendant. Therefore, it
22 may be appropriate to require judicial participation at the recognition and enforcement stage of
23 the proceedings by requiring the judgment creditor to bring an action on the judgment, rather
24 than allowing recognition and enforcement to occur through the registration procedure without
25 judicial participation. The provision is bracketed to draw attention to it as an issue for special
26 consideration by the Committee.
27

28 The fee provision in subsection (i) is based on Section 5 of the Uniform Enforcement of
29 Foreign Judgments Act.
30

31
32 **SECTION 7. [*Effect of Recognition of a Foreign Country Judgment Under this Act.*]**

33 (a) If the court in a proceeding under Section 5 of this Act finds that the foreign country
34 judgment is entitled to recognition under this Act, or if that determination is otherwise made in
35 accordance with section 6, then the foreign country judgment

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

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

3 (b) If the court in a proceeding under Section 5 of this Act finds that a foreign country
4 judgment entitled to recognition under the Act also is entitled to be enforced, or if that
5 determination is otherwise made in accordance with section 6, then the foreign country judgment
6 shall be

7 (1) enforceable to the same extent as a judgment of a court of this State;

8 (2) subject to being satisfied in the same manner as a judgment of a court of this
9 State; and

10 (3) subject to the same grounds and proceedings for reopening, vacating, or
11 staying a judgment as are available with regard to a judgment of a court of this State.

12 **Reporter's Notes**

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

16
17 Subsection (b) is new. It is based on section 2 of the Uniform Enforcement of Foreign
18 Judgments Act. The procedures set out in sections 5 and 6 for determining whether a foreign
19 country judgment should be recognized also contemplate that the issue of enforceability of the
20 judgment likely will be determined as well. Recognition of a foreign country judgment places it
21 on an equal footing with a foreign judgment from a sister state of the United States, and
22 subsection (a)(2) so provides. A determination that the judgment is enforceable places it on an
23 equal footing with a judgment of the courts of the state in which enforcement is sought, and
24 subsection (b) so provides.

25 26 27 **SECTION 8. [*Stay of Recognition or Enforcement of Foreign Country Judgment.*]**

28 (a) If the judgment debtor establishes that an appeal from the foreign country judgment is
29 pending or will be taken, the court shall stay any proceedings with regard to recognition or

1 enforcement of the foreign country judgment until the appeal is concluded, the time for appeal
2 expires, or the judgment debtor has had a sufficient period of time to prosecute the appeal and
3 has failed to do so.

4 (b) If the judgment debtor shows any grounds upon which enforcement of any judgment
5 of any [District Court of any city or county] of this State would be stayed, the court shall stay
6 enforcement of the foreign country judgment for an appropriate period, upon requiring the same
7 security for satisfaction of the judgment which is required in this State.

8 (c) If the judgment debtor establishes that a stay of execution has been granted by the
9 rendering court, then the court shall stay enforcement of the foreign country judgment until the
10 stay of execution ordered by the rendering court expires or is vacated.

11 **Reporter's Notes**

12
13 Subsection (a) is the same substantively as section 6 of the current Act, except that it adds
14 as an additional measure for the duration of the stay “the time for appeal expires.” Subsections
15 (b) and (c) are based on section 4 of the Uniform Enforcement of Foreign Judgments Act. The
16 latter provisions are added as part of the addition of procedures for recognition of foreign country
17 judgments.

18
19
20 **SECTION 9. [*Statute of Limitations.*]**

21 Any proceeding brought pursuant to this Act to recognize or enforce a foreign country
22 judgment must be commenced within the time period provided in this State for commencement
23 of an action to enforce a sister state judgment.

24 **Reporter's Notes**

25
26 The current Act does not contain a statute of limitations. Some courts have applied the
27 state's general statute of limitations, *E.g.*, *Vrozos v. Sarantopoulos*, 552 N.E.2d 1053 (Ill. App.
28 1990) (as Recognition Act contains no statute of limitations, general five-year statute of
29 limitations applies), while others have applied the statute of limitations applicable with regard to

1 enforcement of a domestic judgment, *E.g.*, *La Societe Anonyme Goro v. Conveyor Accessories,*
2 *Inc.*, 677 N.E. 2d 30 (Ill. App. 1997). This draft takes the position that the same statute of
3 limitations as that applicable to sister state judgments should apply. See Study Report, section III
4 (F)(1).

5
6
7 **SECTION 10. [*Saving Clause.*]** This Act does not prevent the recognition of a foreign
8 country judgment not covered by this Act under principles of comity or otherwise.

9 **Reporter's Notes**

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

17
18
19 **SECTION 11. [*Uniformity of Interpretation.*]**

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

22 **Reporter's Notes**

23 This section is the same as Section 7 of the current Act.

24
25
26
27 **SECTION 12. [*Short Title.*]**

28 This Act may be cited as Amendments to the Foreign Money Judgments Recognition Act.

29 **Reporter's Notes**

30 This section is an updated version of Section 8 of the current Act.

31
32
33
34 **SECTION 13. [*Repeal.*]**

35 [The following Acts are repealed:

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

2 (2)

3 (3) .]

4 **Reporter’s Notes**

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

6

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SECTION 14. [Effective Date.]

10 This Act shall take effect

11 **Reporter’s Notes**

12

13

This section is the same as Section 10 of the current Act.