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M E M O R A N D U M

Date: June 17, 2018

To: Uniform Law Commission

From: Lisa R. Jacobs, Esquire, Chair, Professor Kathleen Patchel, Vice-Chair, and Professor James P. George, Reporter

Re: Registration of Canadian Money Judgments Act

I. Introduction

The Joint Drafting Committee on the Registration of Canadian Money Judgments Act, formerly known as the Joint Drafting Committee on Registration of Foreign Judgments to Harmonize the Law of the United States and Canada, is a joint drafting committee composed of members of the Uniform Law Commission (ULC) and the Uniform Law Commission of Canada (ULCC). The Joint Drafting Committee is charged with creating a registration procedure for the recognition in the states of the United States of money judgments originating in Canada that is harmonized (on substantially similar bases and with substantially similar procedures to the extent practicable) with that of the Canadian provinces and territories. The end goal is the establishment of a streamlined registration option for the recognition of foreign country money judgments originating in either country where recognition is sought in a jurisdiction in the other country .

The registration procedure will provide an expedited administrative alternative to the filing of a lawsuit for recognition of a Canadian money judgment in a state court in the United States Under the Act, a person seeking recognition of a Canadian money judgment for purposes of enforcement¹ may register the judgment in the office of the court clerk in a court in which an action for recognition and enforcement could be filed.² Once registered, a Canadian money judgment will have the same force and effect as a foreign country money judgment that has been determined to be entitled to recognition by a court under the Uniform Foreign Country Money Judgment Recognition Act (2005) (UFCMJRA) – it is (1) conclusive between the parties to the same extent as a sister-state judgment entitled to full faith and credit and (2) enforceable in the

¹ Under Subsection 4(a), the registration procedure is available only when the purpose of registration is enforcement of the Canadian money judgment – i.e., use of available procedures in the state to collect the amount of the judgment. The issue of recognition of a Canadian judgment solely to establish its preclusive effect inevitably will be raised in the course of a court proceeding, and thus registration is not an appropriate procedure with regard to that situation.

² Section 4.

same manner and to the same extent as a judgment rendered in the recognizing state.³ The effect of recognition and enforcement, however, is subject to a 30 day grace period, measured from the time notice of the registration is served on the person against whom recognition and enforcement is sought.⁴ Notice of the registration is given to the person against whom recognition through registration is sought in the same manner as a summons and complaint seeking recognition through a civil court action is required to be served.⁵ The person against whom the Canadian money judgment is registered may petition the court not later than 30 days after receiving notice of the registration to have the registration set aside on any of the grounds upon which recognition of a foreign country money judgment could be denied under the UFCMJRA.⁶ If a petition to set aside the registration is filed, then the question of whether the Canadian money judgment is recognized will be determined by the court.

Statutes in the Canadian provinces and territories long have provided a procedure for registration of foreign country money judgments. Both the original Canadian statutes addressing recognition and enforcement of foreign country judgments, the Reciprocal Enforcement of Judgments Acts, and the more modern Uniform Enforcement of Foreign Judgments Act (UEFJA), which is a ULCC product, contain registration procedures. The availability of these registration procedures to U.S. judgment creditors under the two Acts, however, differs significantly: under the Reciprocal Enforcement Acts, registration is available only for foreign country judgments from a jurisdiction that has been designated a reciprocal jurisdiction by a political official within the particular province or territory,⁷ while under the UEFJA, any foreign country judgment may be recognized and enforced by registration as long as the judgment meets the statutory requirements for recognition and enforcement.

In contrast, while registration procedures are available with regard to sister-state money judgments⁸ and certain other types of foreign judgments,⁹ there currently is no generally available registration procedure for recognition of foreign country money judgments in the United States. In the United States, recognition of foreign country money judgments is governed in most jurisdictions by either the UFCMJRA¹⁰ or its predecessor, the Uniform Foreign

³ Section 5(a); *see* UFCMJRA § 7.

⁴ Section 5(b).

⁵Section 6 (a)&(b).

⁶ Section 7. *See e.g.*, UFCMJRA §4.

⁷ *See, e.g.*, Reciprocal Enforcement of Judgments Act, Revised Statutes of Alberta 2000, Chapter R-6, §8(1) (Lieutenant Governor in Council may by order declare a jurisdiction outside Canada a reciprocal jurisdiction for purposes of the Act).

⁸ Revised Uniform Enforcement of Foreign Judgments Act (1964) (ULC).

⁹ *See, e.g.*, Uniform Interstate Family Support Act. (2001) (amended 2008) (ULC) (applies to recognition of both interstate and international child support orders).

¹⁰ The UFCMJRA has been adopted in 24 jurisdictions.

Money-Judgments Recognition Act (1962) (UFMJRA),¹¹ both of which are ULC uniform laws. Neither of these acts provides a registration procedure for recognition of foreign country money judgments; indeed Section 6 of the UFCMJRA expressly requires that the person seeking recognition of a judgment emanating from a foreign country file a court action in order to have that judgment recognized. Jurisdictions that have not enacted either the UFCMJRA or the UFMJRA recognize foreign country money judgments under common law principles of comity. Under the common law, a person seeking recognition of a foreign country judgment must file a court action in the jurisdiction in which recognition is sought requesting that the foreign country judgment be “domesticated,” so that it can be treated like a judgment of the recognizing jurisdiction.

II. Issues

Because the Canadian law in this area is more developed than that in the United States, the task for the Joint Drafting Committee largely has been to develop a registration procedure for the U.S. that is harmonized to the extent possible with that already developed in Canada, particularly as provided in the ULCC’s UEFJA. Not surprisingly, many of the issues with which the Joint Drafting Committee is dealing are focused on to what extent this Act should harmonize with Canadian law. In general, the Joint Drafting Committee has taken the approach that the provisions in this Act should be comparable to the provisions in Canadian law, particularly the ULCC’s UEFJA, unless there is a practical or strong policy reason for deviation. The following two issues illustrate this proposition.

(1) Grace period under Section 5(b)

As mentioned above, the effect of registration of a Canadian judgment is that it is given the same force and effect as a judgment that has been determined by a court to be entitled to recognition under the UFCMJRA. The ability to enforce the registered judgment, however, is subject to a 30-day period during which certain enforcement actions may not be taken in order to provide the person against whom the judgment is registered an opportunity to raise any defenses that would cause the registration to be set aside. Both of these provisions are comparable to the Canadian UEFJA.¹² The Canadian UEFJA, however, only prohibits enforcement “by the sale or other disposition of any property of the judgment debtor.”¹³ ULC members of the Joint Drafting Committee have questioned whether the scope of the UEFJA exception is too narrow, as enforcement measures short of final disposition of property – for example, garnishment – can cause significant and possibly irreversible damage to a judgment debtor. The consensus so far seems to be that, because of this concern, this Act should contain a broader exception than that found in the UEFJA, although the Joint Drafting Committee has not yet reached consensus on the

¹¹ The UFMJRA is in effect in 14 jurisdictions.

¹² See UEFJA §14(3).

¹³ *Id.*

precise content of the broader exception.¹⁴

(2) Method for Providing Notice of Registration to the Judgment Debtor – Section 6(b).

Both the Canadian UEFJA and this Act require that notice of registration be given to the judgment debtor. Subsection 6(b) of this Act requires that this notice be served in the same manner as a summons and complaint. The Joint Drafting Committee spent considerable time discussing whether a requirement less stringent than personal service – for example, service of notice by registered mail – would be adequate. Ultimately, however, the initial consensus of the Joint Drafting Committee was that, because notice of registration is served in the same manner as a summons and complaint under Canadian law, personal service should be required in this Act.¹⁵

III. Drafting Approach

Each of the Canadian UEFJA and the Canadian Reciprocal Enforcement of Judgments Acts contain both the substantive standards for recognition of foreign judgments and a registration procedure. As discussed above, however, the substantive standards for recognition of foreign judgments in the United States are contained in the majority of states in statutes that do not provide for recognition through registration, most notably the UFCMJRA, which so far has been adopted in nearly half the states and is a ULC targeted act. Therefore, in addition to harmonizing this Act with Canada's registration procedures, this Act is intended to supplement and integrate into a state's existing UFCMJRA.¹⁶ In those states that have not yet adopted the UFCMJRA, it is intended that this Act may be adopted as a companion act at the time of the state's adoption of the UFCMJRA. This Act, however, is not intended to be used on a stand-alone basis in states that have not enacted, or are not enacting the UFCMJRA, ; given the difficulties in conforming this Act with the scheme for recognizing foreign judgments in such states. Given this intent, the drafting approach for the Act is to reference the applicable substantive rules in the UFCMJRA, rather than to restate those rules in this Act.

IV. Conclusion

The Joint Drafting Committee looks forward to presenting this Act at the 2018 Annual Meeting and to receiving the comments of the Committee of the Whole.

¹⁴ The Joint Drafting Committee has proposed three alternatives based on views that had gained some support during the Committee's deliberations in order to help focus its future discussion of this issue. *See* Section 5(b). These alternatives are discussed in more detail in Reporter's Note 3 to Section 5.

¹⁵ This issue is discussed in more detail in Reporter's Notes 2 and 3 to Section 6.

¹⁶ *See* Section 8(a).