The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200_)

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

SECTION 1. SHORT TITLE. This Act may be cited as the Uniform Foreign-Country Money Judgments Recognition Act (200_).

SECTION 2. DEFINITIONS. As used in this Act:

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

(i) the United States;

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

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

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

SECTION 3. SCOPE OF THE ACT.

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

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

(2) is under the law of the foreign country where rendered final, conclusive, and enforceable, even though an appeal from the foreign country judgment is pending or the foreign country judgment is subject to appeal in the foreign country where the foreign country judgment was rendered.

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

(i) a judgment for taxes;

(ii) a fine or other penalty; or

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

(c) The party seeking recognition of a foreign country judgment has the burden of establishing that the foreign country judgment meets the requirements of this section.

SECTION 4. STANDARDS FOR RECOGNITION OF A FOREIGN COUNTRY JUDGMENT.

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

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

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

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

or

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

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

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

(2) the foreign country judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
(3) the judgment or the [cause of action] [claim for relief] on which the
judgment is based is repugnant to the public policy of this State or of the United States;

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

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

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

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

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

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

SECTION 5. PERSONAL JURISDICTION.

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

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

(2) the defendant voluntarily appeared in the proceedings, other than for
the purpose of protecting property seized or threatened with seizure in the proceedings or of
contesting the jurisdiction of the court over the defendant;
(3) the defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

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

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

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

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

SECTION 6. PROCEDURE FOR RECOGNITION OF A FOREIGN COUNTRY JUDGMENT.

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

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

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

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

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

SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN COUNTRY JUDGMENT. If a party establishes that an appeal from the foreign country judgment is pending or will be taken, the court may stay any proceedings with regard to recognition or enforcement of the foreign country judgment until the appeal is concluded, the time for appeal expires, or the party appealing has had a sufficient period of time to prosecute the appeal and has failed to do so.

SECTION 9. PERIOD OF TIME IN WHICH TO COMMENCE AN ACTION.

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

(b) This section does not apply to recognition of a foreign country judgment solely for the purpose of giving the foreign country judgment preclusive effect or when recognition of the foreign country judgment is sought solely to use the foreign country judgment as a setoff.
SECTION 10. SAVING CLAUSE. This Act does not prevent the recognition under principles of comity or otherwise of a foreign country judgment not within the scope of this Act.

SECTION 11. UNIFORMITY OF INTERPRETATION. This Act shall be construed in a manner that will effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 12. REPEAL. The following Acts are repealed:

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

(2)

(3)

SECTION 13. EFFECTIVE DATE. This Act shall take effect on . . . . This Act shall apply to all actions for recognition of a foreign country judgment filed on or after the effective date of this Act.

[SECTION 14. RECIPROCITY]

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

American Law Institute, International Jurisdiction and Judgments Project, Tentative Draft No. 2 (April, 13, 2004)

§7 Reciprocal Recognition and Enforcement of Foreign Judgments

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

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

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

(i) judgments against nationals of that state in favor of nationals of another state;

(ii) judgments originating in the courts of the United States or of a state of the United States;

(iii) judgments for compensatory damages rendered in actions for personal injury or death;

(iv) judgments for statutory claims;

(v) particular types of judgments rendered by courts in the United States similar to the foreign judgment for which recognition or enforcement is sought;

(vi) recognition practice of the state of origin with regard to judgments of other states.

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

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

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