

D R A F T
FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~October, 2004~~

March 2005

With Reporter's Notes

Copyright ©~~2004~~2005
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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_)

The Committee acting for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Foreign-Country Money Judgments Recognition Act (200_) is as follows:

ROBERT H. CORNELL, 573 Arkansas, San Francisco, CA 94107, *Chair*

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910

JOHN P. BURTON, P.O. Box 1357, 315 Paseo de Peralta, Santa Fe, NM 87501

JOHN A. CHANIN, 5901 Mount Eagle Dr., Apt. 1115, Alexandria, VA 22303, *Enactment Plan Coordinator*

FRANK W. DAYKIN, 2180 Thomas Jefferson Dr., Reno, NV 89509

W. MICHAEL DUNN, P.O. Box 3701, 1000 Elm St., Manchester, NH 03105

HENRY DEEB GABRIEL, JR., Loyola University School of Law, 526 Pine St., New Orleans, LA 70118

CURTIS R. REITZ, University of Pennsylvania School of Law, 3400 Chestnut St., Philadelphia, PA 19104

H. KATHLEEN PATCHEL, Indiana University, School of Law, 530 W. New York St., Indianapolis, IN 46202-3225, *National Conference Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, *President*

REX BLACKBURN, 1673 W. Shoreline Dr., Suite 200, Boise, ID 83707, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

ELIZABETH M. BOHN, 777 Brickell Ave., Ste. 500, Miami, FL 33131-2803, *American Bar Association Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois -60611
312/915-0195
www.nccusl.org

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

TABLE OF CONTENTS

<u>PREFATORY NOTE</u>	<u>4</u>	
<u>SECTION 1. SHORT TITLE</u>	<u>5</u>	
<u>SECTION 1-2. DEFINITIONS.....</u>	<u>15</u>	
<u>SECTION 2-3. SCOPE OF THE ACT</u>	<u>28</u>	
<u>SECTION 3-4. STANDARDS FOR RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT</u>	<u>510</u>	
<u>SECTION 4-5. PERSONAL JURISDICTION.].....</u>	<u>9</u>	<u>15</u>
<u>SECTION 5-6. PROCEDURE FOR RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT</u>	<u>116</u>	
<u>SECTION 6-7. EFFECT OF RECOGNITION OF A FOREIGN-COUNTRY JUDGMENT UNDER THIS ACT</u>	<u>1420</u>	
<u>SECTION 7-8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT</u>	<u>1521</u>	
<u>SECTION 8-9. PERIOD OF TIME IN WHICH TO COMMENCE AN ACTION</u>	<u>1621</u>	
<u>SECTION 9-10. SAVING CLAUSE</u>	<u>1723</u>	
<u>SECTION 10-11. UNIFORMITY OF INTERPRETATION.....</u>	<u>1723</u>	
<u>SECTION 11. SHORT TITLE</u>	<u>17</u>	
<u>SECTION 12. -REPEAL.....</u>	<u>1723</u>	
<u>SECTION 13. -EFFECTIVE DATE</u>	<u>1824</u>	
<u>SECTION 14. RECIPROCITY.....</u>	<u>24</u>	

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

2
3
4 PREFATORY NOTE

5
6
7 ~~SECTION 1. DEFINITIONS. As used in this Act:~~

8 ~~(a) "Foreign country" means any governmental unit with regard to which the~~
9 ~~decision in this State as to whether to recognize the judgments of that governmental unit's courts~~
10 ~~is not initially subject to determination under the standards for recognition established by the~~
11 ~~Full Faith and Credit Clause of the United States Constitution.~~

12 ~~(b) "Foreign country judgment" means a judgment of a court of a foreign country.~~

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~~
25 ~~the 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." The National Conference of Commissioners on Uniform State~~
28 ~~Laws promulgated the current Uniform Foreign Money-Judgments Recognition Act in 1962.~~
29 ~~The Act codified the most prevalent common law rules with regard to the recognition of money~~
30 ~~judgments rendered in other countries. The hope was that codification by a state of its rules on~~
31 ~~the recognition of foreign country money judgments, by satisfying reciprocity concerns of~~
32 ~~foreign courts, would make it more likely that money judgments rendered in that state would be~~
33 ~~recognized in other countries. Towards this end, the Act sets out the circumstances in which the~~
34 ~~courts in states that have adopted the Act must recognize foreign country money judgments. It~~
35 ~~delineates a minimum of foreign country judgments that must be recognized by the courts of~~
36 ~~adopting states, leaving those courts free to give recognition to other foreign country judgments~~
37 ~~not covered by the Act under principles of comity or otherwise. The Act, however, does not~~
38 ~~establish a procedure for either recognition or enforcement of foreign country money judgments;~~

1 it merely sets out the standards under which those judgments will be recognized.

2
3 In June 2003, a Study Committee appointed by NCCUSL to review the current Act
4 issued a Study Committee Report regarding possible amendment of the Act. That Report found
5 that the Act had in large part been successful in carrying out its purpose of establishing clear
6 standards under which state courts will enforce foreign country money judgments. The Report
7 also concluded, however, that there had been a sufficient number of interpretative issues raised
8 by the current Act to warrant a revision of the Act limited to clarification of those issues. The
9 current Drafting Committee was appointed in January 2004. Its charge is “to draft amendments
10 to the Uniform Foreign Money-Judgments Recognition Act, with the scope of the project limited
11 to those issues necessary to correct problems created by the current Act and its interpretation by
12 the courts.”

13
14 ~~———— The current Act defines a “foreign state” as “any governmental unit other than the United~~
15 ~~States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama~~
16 ~~Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands.” This definition~~
17 ~~obviously needs to be updated. The Committee decided at its April, 2004 drafting committee~~
18 ~~meeting to abandon the “laundry list” approach of the current Act’s “foreign state” definition~~
19 ~~and, instead to define “foreign country” in terms of whether the judgments of the particular~~
20 ~~governmental unit’s courts are initially subject to the Full Faith and Credit Clause standards for~~
21 ~~determining whether those judgments will be recognized. Under this new definition, a~~
22 ~~governmental unit is a “foreign country” if its judgments are not initially subject to Full Faith~~
23 ~~and Credit Clause standards. The Full Faith and Credit Clause, Art. IV, section 1, provides that~~
24 ~~“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial~~
25 ~~Proceedings of every other State. And the Congress may by general Laws prescribe the Manner~~
26 ~~in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.” Pursuant~~
27 ~~to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress~~
28 ~~passed 28 U.S.C.A. §1738, which provides *inter alia* that court records from “any State,~~
29 ~~Territory, or Possession of the United States” are entitled to full faith and credit under the Full~~
30 ~~Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the United States~~
31 ~~Supreme Court held that this statute also requires that full faith and credit be given to judgments~~
32 ~~of federal courts. Thus, the Draft’s approach captures what appears to have been the underlying~~
33 ~~principle of the “laundry list” definition in the current Act while not suffering from the need for~~
34 ~~periodic legislative updating inherent in that approach. The Draft’s definition of “foreign~~
35 ~~country” in terms of those judgments not subject to Full Faith and Credit standards also has the~~
36 ~~advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign~~
37 ~~Judgments Act. That Act, which establishes a registration procedure for the enforcement of~~
38 ~~sister state and equivalent judgments, defines a “foreign judgment” as “any judgment, decree, or~~
39 ~~order of a court of the United States or of any other court which is entitled to full faith and credit~~
40 ~~in this state.” Uniform Enforcement of Foreign Judgments Act, §1 (1964). By defining “foreign~~
41 ~~country” in the Recognition Act in terms of those judgments not subject to full faith and credit~~
42 ~~standards, the Draft makes it clear that the Enforcement Act and the Recognition Act are~~
43 ~~mutually exclusive, and that, between the two acts, they cover the full array of foreign money~~
44 ~~judgments.~~

1 The goal of this revision, therefore, is not to change the basic rules or approach of the
2 current Act, but rather to clarify its application in situations in which issues have arisen. Among
3 the more significant issues identified by the Study Report which are addressed in this Revised
4 Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and
5 clarify the scope provisions, and to allocate the burden of proof with regard to establishing
6 application of the Act; (3) the need to provide a specific procedure by which recognition of a
7 foreign country money judgment under the Act must be sought; (4) the need to clarify and, to a
8 limited extent, expand upon the grounds for denying recognition in light of differing
9 interpretations of those provisions in the current case law; (5) the need to expressly allocate the
10 burden of proof with regard to the grounds for denying recognition; (6) the need to establish a
11 statute of limitations for certain recognition actions; and (7) the need to revisit the issue of
12 whether a reciprocity requirement should be included in the Act in light of nonuniform state
13 enactments that have included such a requirement.

14 **UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (200)**
15

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

23
24 ~~———— The definition of “judgment debtor” has been deleted because that definition is no longer~~
25 ~~necessary in light of the Committee’s decision at its April, 2004 drafting committee meeting not~~
26 ~~to include a registration procedure in the Act.~~

27
28 ~~———— With regard to the problems leading to changes in this section, see generally the~~
29 ~~discussion in section III(A) of the Study Report.~~
30

31 ~~———— **SECTION 2. SCOPE OF THE ACT.**~~

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

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

35 ~~———— (2) is under the law of the foreign country where rendered final,~~

36 ~~conclusive, and, if the foreign country judgment grants recovery of a sum of money, enforceable,~~

1 even though an appeal from the foreign country judgment is pending or the foreign country
2 judgment is subject to appeal in the foreign country where the foreign country judgment was
3 rendered.

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

7 _____ (i) a judgment for taxes;

8 _____ (ii) a fine or other penalty; or

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

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

16 **Reporter's Notes**

17
18 _____ This section is based on Section 2 of the current Act. Subsection (b) contains material
19 that formerly was included as part of the definition of "foreign judgment." For discussion of the
20 problems caused by inclusion of this material in the definition of "foreign judgment," see Study
21 Report, section III (A) (3).

22
23 _____ The domestic relations exclusion has been redrafted to make it clear that all judgments in
24 domestic relations matters are excluded from the Act, not just judgments "for support" as
25 provided in the current Act. See Study Report, section III (A) (4).

26
27 _____ The qualifying phrase "if the foreign country judgment grants recovery of a sum of
28 money" has been added to the requirement that the foreign country judgment be enforceable
29 where rendered in light of the fact that only judgments that grant recovery are eligible to be

1 enforced. If the judgment denies recovery, then there is no money judgment to be enforced.

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

14 SECTION 1. SHORT TITLE. This [act] may be cited as the [Recognition Act of
15 200]].

16 Reporter's Notes

17
18 This section is an updated version of Section 9 of the current Act. It has been moved
19 from Section 11 of the October 2004 Draft to Section 1 of this Draft in accordance with current
20 Conference practice.

21
22 [As discussed at the October meeting, the Drafting Committee needs to decide upon a
23 short title for the Act. The Reporter's suggestion is in brackets in the text.]
24

25 26 27 SECTION 2. DEFINITIONS. As used in this [act]:

28 (a) "Foreign country" means any governmental unit other than

29 (i) the United States;

30 (ii) a state, district, commonwealth, territory or insular possession of

31 the United States; or

32 (iii) any other governmental unit with regard to which the decision in

1 this state as to whether to recognize the judgments of that
2 governmental unit's courts is initially subject to determination
3 under the Full Faith and Credit Clause of the United States
4 Constitution.

5 (b) "Foreign-country judgment" means a judgment of a court of a foreign country.

6 Reporter's Notes

7
8 The defined terms "foreign state" and "foreign judgment" in the current Act have been
9 changed to "foreign country" and "foreign-country judgment" in order to make it clear that the
10 Act does not apply to recognition of sister-state judgments. Some courts have noted that the
11 "foreign state" and "foreign judgment" definitions have caused confusion as to whether the Act
12 should apply to sister-state judgments because "foreign state" and "foreign judgment" are terms
13 of art generally used in connection with recognition and enforcement of sister-state judgments.
14 See, e.g., Eagle Leasing v. Amandus, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court's
15 application of UFMJRA to a sister-state judgment, but noting lower court's confusion was
16 understandable as "foreign judgment" is term of art normally applied to sister-state judgments).
17 See also, Uniform Enforcement of Foreign Judgments Act §1 (defining "foreign judgment" as
18 the judgment of a sister state or federal court). Several states (for example, New York) have
19 nonuniform amendments to the Act that change the defined terms to "foreign country" and
20 "foreign country judgment."

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

29 _____ The current Act defines a "foreign state" as "any governmental unit other than the United
30 States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama
31 Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands." This definition
32 obviously needs to be updated. The Committee decided at its October, 2004 drafting committee
33 meeting that, rather than simply updating the list in the current Act's definition of "foreign
34 state," the new definition of "foreign country" should combine the "listing" approach of the
35 current Act's "foreign state" definition with a provision that defines "foreign country" in terms
36 of whether the judgments of the particular governmental unit's courts are initially subject to the
37 Full Faith and Credit Clause standards for determining whether those judgments will be
38 recognized. Under this new definition, a governmental unit is a "foreign country" if it is (1) not
39 the United States or a state, district, commonwealth, territory or insular possession of the United

1 States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

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

9 The Full Faith and Credit Clause, Art. IV, section 1, provides that “Full Faith and Credit
10 shall be given in each State to the public Acts, Records, and judicial Proceedings of every other
11 State. And the Congress may by general Laws prescribe the Manner in which such Acts,
12 Records, and Proceedings shall be proved, and the Effect thereof.” Whether the judgments of a
13 governmental unit are subject to the Full Faith and Credit Clause may be determined by judicial
14 interpretation of the Full Faith and Credit Clause or by statute, or by a combination of these two
15 sources. For example, pursuant to the authority granted by the second sentence of the Full Faith
16 and Credit Clause, Congress has passed 28 U.S.C.A. §1738, which provides *inter alia* that court
17 records from “any State, Territory, or Possession of the United States” are entitled to full faith
18 and credit under the Full Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938),
19 the United States Supreme Court held that this statute also requires that full faith and credit be
20 given to judgments of federal courts. States also have made determinations as to whether certain
21 types of judgments are subject to the Full Faith and Credit Clause. Under the definition of
22 “foreign country” in this Draft, the determination as to whether a governmental unit’s judgments
23 are subject to full faith and credit standards should be made by reference to any relevant law,
24 whether statutory or decisional, that is applicable “in this state.”

25
26 **Comments to be added:**

27 The Draft’s definition of “foreign country” in terms of those judgments not subject to
28 Full Faith and Credit standards also has the advantage of more effectively coordinating the Act
29 with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a
30 registration procedure for the enforcement of sister state and equivalent judgments, defines a
31 “foreign judgment” as “any judgment, decree, or order of a court of the United States or of any
32 other court which is entitled to full faith and credit in this state.” Uniform Enforcement of
33 Foreign Judgments Act, §1 (1964). By defining “foreign country” in the Recognition Act in
34 terms of those judgments not subject to full faith and credit standards, the Draft makes it clear
35 that the Enforcement Act and the Recognition Act are mutually exclusive – if a foreign money
36 judgment is subject to full faith and credit standards, then the Enforcement Act’s registration
37 procedure is available with regard to its enforcement; if the foreign money judgment is not
38 subject to full faith and credit standards, then the foreign money judgment may not be enforced
39 until recognition of it has been obtained in accordance with the provisions of the Recognition
40 Act.

1 (1) ~~A comment regarding the fact that the requirement that a foreign country judgment be~~
2 ~~“final, conclusive and enforceable where rendered” involves three distinct concepts, all~~
3 ~~of which must be present in order to satisfy the requirement;~~

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

9
10
11 (1) ~~A comment discussing the rationale for the exclusions from coverage and noting that the~~
12 ~~excluded types of judgments may be enforced under principles of comity;~~

13 The definition of “judgment debtor,” which appeared in earlier drafts, was deleted in the
14 October, 2004 draft because that definition is no longer necessary in light of the Committee’s
15 decision at its April, 2004 drafting committee meeting not to include a registration procedure in
16 the Act.

17
18 With regard to the problems leading to changes in this section, see generally the
19 discussion in section III(A) of the Study Report.

20
21 **Comments to be added:**

22 (1) A comment acknowledging that, while the concept of “governmental unit” will in
23 most cases be clear, as the money judgment will be one issued by a court of a foreign
24 country or one of its subdivisions, in some instances issues may arise, and the
25 Recognition Act leaves those issues for determination by the courts. For example, a
26 number of international tribunals, such as the International Court of Justice, the
27 European Court of Justice, the Law of the Sea Tribunal, the European Court of
28 Human Rights, and the Inter-American Court of Human Rights, issue judgments.
29 Whether a money judgment issued by such a tribunal would constitute a judgment of
30 a “foreign country” as a judgment of a governmental unit not subject to full faith and
31 credit standards is left for determination by the courts. (It should be noted that the
32 ALI International Jurisdiction and Judgments Project excludes judgments of
33 international tribunals from its proposed Act).

34
35 (2) A comment explaining that arbitral awards are excluded from the Recognition Act,
36 but that a foreign-country money judgment confirming or setting aside an arbitral
37 award is within the Recognition Act.

38
39 (3) A comment explaining that a “judgment” need not take a particular form – any order
40 or decree that meets the requirements of this section and comes within the scope of
41 the Act under Section 3 is subject to the Act. Similarly, any tribunal that issues such
42 a “judgment” comes within the term “court” for purposes of the Recognition Act.

1
2 (4) A comment explaining that a judgment need not be between two private parties in
3 order to constitute a judgment for purposes of the Recognition Act. Judgments in
4 which a governmental entity is a party also are included. (Such judgments, of course,
5 would also have to meet the requirements of Section 3).
6
7

8 **SECTION 3. SCOPE OF THE ACT.**

9 (a) Except as otherwise provided in subsection (b), this [act] applies to any
10 foreign-country judgment to the extent that the foreign-country judgment

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

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

13 conclusive, and enforceable, even though an appeal from the foreign-country judgment is

14 pending or the foreign-country judgment is subject to appeal in the foreign country where it was
15 rendered.

16 (b) This [act] does not apply to a foreign-country judgment, even if the foreign-
17 country judgment grants or denies recovery of a sum of money, to the extent that the foreign-

18 country judgment is

19 (1) a judgment for taxes;

20 (2) a fine or other penalty; or

21 (3) a judgment for divorce, support, or maintenance, or other judgment

22 rendered in connection with domestic relations.

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

25 **Reporter's Notes**

26 This section is based on Section 2 of the current Act. Subsection (b) contains material
27

1 that formerly was included as part of the definition of “foreign judgment.” For discussion of the
2 problems caused by inclusion of this material in the definition of “foreign judgment,” see Study
3 Report, section III (A) (3).
4

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

9 The October 2004 Draft added the qualifying phrase “if the foreign country judgment
10 grants recovery of a sum of money” to the requirement that the foreign country judgment be
11 enforceable where rendered in light of the fact that only judgments that grant recovery are
12 eligible to be enforced. If the judgment denies recovery, then there is no money judgment to be
13 enforced. The Drafting Committee decided at its October 2004 meeting to delete that phrase and
14 place its substance in a comment.
15

16 Section 2 of the current Act does not contain any provision indicating who has the burden
17 of proof to establish whether a foreign country judgment is within the scope of the Act. Courts
18 generally have held that the burden of proof is on the person seeking recognition to establish that
19 the judgment is final, conclusive and enforceable where rendered. E.g., Mayekawa Mfg. Co.
20 Ltd. v. Sasaki, 888 P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish
21 judgment is final, conclusive, and enforceable where rendered); Bridgeway Corp. v. Citibank, 45
22 F.Supp.2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a
23 final judgment, conclusive and enforceable where rendered); S.C.Chimexim S.A. v. Velco
24 Enterprises, Ltd., 36 F. Supp.2d 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of
25 establishing conclusive effect). See Study Report, section III (B) (1). The Committee decided at
26 its October 2004 meeting that the burden of proof to establish whether a foreign country
27 judgment is within the scope of the Act should be on the party seeking recognition of the foreign
28 country judgment with regard to both subsection (a) and subsection (b).
29

30 The Committee decided at its April 2004 meeting to add the “to the extent” language of
31 subsection (3)(a) in order to make it clear that, if only part of a foreign country judgment meets
32 the requirements of subsection (3)(a), then the foreign country judgment may be recognized
33 under this Act to that extent. The Committee decided at its October 2004 meeting to add similar
34 language to subsection (3)(b).
35

36 **Comments to be added:**
37

- (1) A comment regarding the fact that the requirement that a foreign country judgment be “final, conclusive and enforceable where rendered” involves three distinct concepts, all of which must be present in order to satisfy the requirement.

A comment discussing the fact that some countries set out VAT taxes as a separate element of a judgment from the purchase price and that this should not make the judgment to that extent one for taxes.