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_)

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

PREFATORY NOTE

SECTION 1. DEFINITIONS. As used in this Act:

(a) “Foreign country” means any 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 not initially subject to determination under the standards for recognition established by 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.

Reporter’s Notes

The defined terms “foreign state” and “foreign judgment” in the current Act have been changed to “foreign country” and “foreign country judgment” in order to make it clear that the Act does not apply to recognition of sister-state judgments. Some courts have noted that the “foreign state” and “foreign judgment” definitions have caused confusion as to whether the Act should apply to sister-state judgments because “foreign state” and “foreign judgment” are terms of art generally used in connection with recognition and enforcement of sister-state judgments. See, e.g., Eagle Leasing v. Amandus, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court’s application of UFMJRA to a sister-state judgment, but noting lower court’s confusion was understandable as “foreign judgment” is term of art normally applied to sister-state judgments). See also, Uniform Enforcement of Foreign Judgments Act §1 (defining “foreign judgment” as the judgment of a sister state or federal court). Several states (for example, New York) have nonuniform amendments to the Act that change the defined terms to “foreign country” and “foreign country judgment.” The National Conference of Commissioners on Uniform State Laws promulgated the current Uniform Foreign Money-Judgments Recognition Act in 1962. The Act codified the most prevalent common law rules with regard to the recognition of money judgments rendered in other countries. The hope was that codification by a state of its rules on the recognition of foreign country money judgments, by satisfying reciprocity concerns of foreign courts, would make it more likely that money judgments rendered in that state would be recognized in other countries. Towards this end, the Act sets out the circumstances in which the courts in states that have adopted the Act must recognize foreign country money judgments. It delineates a minimum of foreign country judgments that must be recognized by the courts of adopting states, leaving those courts free to give recognition to other foreign country judgments not covered by the Act under principles of comity or otherwise. The Act, however, does not establish a procedure for either recognition or enforcement of foreign country money judgments;
it merely sets out the standards under which those judgments will be recognized.

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

The current Act defines a “foreign state” as “any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands.” This definition obviously needs to be updated. The Committee decided at its April, 2004 drafting committee meeting to abandon the “laundry list” approach of the current Act’s “foreign state” definition and, instead to define “foreign country” in terms of whether the judgments of the particular governmental unit’s courts are initially subject to the Full Faith and Credit Clause standards for determining whether those judgments will be recognized. Under this new definition, a governmental unit is a “foreign country” if its judgments are not initially subject to Full Faith and Credit Clause standards. The Full Faith and Credit Clause, Art. IV, section 1, provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.” Pursuant to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress passed 28 U.S.C.A. §1738, which provides inter alia that court records from “any State, Territory, or Possession of the United States” are entitled to full faith and credit under the Full Faith and Credit Clause. In Stoll v. Gottlieb, 305 U.S. 165, 170 (1938), the United States Supreme Court held that this statute also requires that full faith and credit be given to judgments of federal courts. Thus, the Draft’s approach captures what appears to have been the underlying principle of the “laundry list” definition in the current Act while not suffering from the need for periodic legislative updating inherent in that approach. The Draft’s definition of “foreign country” in terms of those judgments not subject to Full Faith and Credit standards also has the advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a registration procedure for the enforcement of sister-state and equivalent judgments, defines a “foreign judgment” as “any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.” Uniform Enforcement of Foreign Judgments Act, §1 (1964). By defining “foreign country” in the Recognition Act in terms of those judgments not subject to full faith and credit standards, the Draft makes it clear that the Enforcement Act and the Recognition Act are mutually exclusive, and that, between the two acts, they cover the full array of foreign money judgments.
The goal of this revision, therefore, is not to change the basic rules or approach of the current Act, but rather to clarify its application in situations in which issues have arisen. Among the more significant issues identified by the Study Report which are addressed in this Revised Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing application of the Act; (3) the need to provide a specific procedure by which recognition of a foreign country money judgment under the Act must be sought; (4) the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law; (5) the need to expressly allocate the burden of proof with regard to the grounds for denying recognition; (6) the need to establish a statute of limitations for certain recognition actions; and (7) the need to revisit the issue of whether a reciprocity requirement should be included in the Act in light of nonuniform state enactments that have included such a requirement.

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

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

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

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

**SECTION 2. 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, if the foreign country judgment grants recovery of a sum of money, 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 to have a foreign country judgment recognized has the burden of establishing that the foreign country judgment meets the requirements of subsection (a). [The party seeking to avoid recognition of the foreign country judgment has the burden of establishing that the foreign country judgment is one excluded from the scope of this Act under subsection (b).]

Reporter's Notes

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

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

The qualifying phrase “if the foreign country judgment grants recovery of a sum of money” has been added to the requirement that the foreign country judgment be enforceable where rendered in light of the fact that only judgments that grant recovery are eligible to be
enforced. If the judgment denies recovery, then there is no money judgment to be enforced.

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

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

Reporter’s Notes

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

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

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.

Reporter’s Notes

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

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

The current Act defines a “foreign state” as “any governmental unit other than the United
States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama
Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands.” This definition
obviously needs to be updated. The Committee decided at its October, 2004 drafting committee
meeting that, rather than simply updating the list in the current Act’s definition of “foreign
state,” the new definition of “foreign country” should combine the “listing” approach of the
current Act’s “foreign state” definition with a provision that defines “foreign country” in terms
of whether the judgments of the particular governmental unit’s courts are initially subject to the
Full Faith and Credit Clause standards for determining whether those judgments will be
recognized. Under this new definition, a governmental unit is a “foreign country” if it is (1) not
the United States or a state, district, commonwealth, territory or insular possession of the United
States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

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

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

Comments to be added:

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

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

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

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

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

Comments to be added:

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

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

(3) A comment explaining that a “judgment” need not take a particular form – any order or decree that meets the requirements of this section and comes within the scope of the Act under Section 3 is subject to the Act. Similarly, any tribunal that issues such a “judgment” comes within the term “court” for purposes of the Recognition Act.
(4) A comment explaining that a judgment need not be between two private parties in order to constitute a judgment for purposes of the Recognition Act. Judgments in which a governmental entity is a party also are included. (Such judgments, of course, would also have to meet the requirements of Section 3).

SECTION 3. SCOPE OF THE ACT.

(a) Except as otherwise 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) under the law of the foreign country where rendered, is 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 it was rendered.

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

(1) a judgment for taxes;

(2) a fine or other penalty; or

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

(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.

Reporter’s Notes

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

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

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

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

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

Comments to be added:
(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.