

RECOGNITION AND ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

"Recognition and enforcement" generally refers to the procedure whereby a local court accepts a judgment obtained by a litigant in a foreign judicial proceeding as binding, and compels compliance by a party with that judgment.

I. Fundamentals

1. No extraterritorial effect for local judgments - In most circumstances, a court's judgment has no direct force outside the forum's jurisdiction. Consequently, a judgment will have effect in a foreign jurisdiction only if the courts of such jurisdiction are willing to provide their assistance by "recognizing" and "enforcing" the judgment. However, with the introduction of e-commerce business transactions, the extraterritorial effect of local judgments is being tested, as courts attempt to impose jurisdiction over websites that have a worldwide audience.
2. "Recognition" - A foreign judgment is "recognized" when a local court concludes that a particular claim or factual dispute has already been adjudicated by a foreign court and that such claim or dispute will not be litigated further. "Recognition" is therefore similar to the domestic U.S. doctrines of res judicata ("claim preclusion") and collateral estoppel ("issue preclusion").
3. "Enforcement" - A foreign judgment is "enforced" when a local court uses its coercive powers to order the relief granted by the foreign court.
4. "Recognition" and "enforcement" in the U.S. domestic context - The "full faith and credit" clause of the Constitution (Article IV, §§ 1) requires state courts to recognize valid and final sister state judgments.

II. International Conventions

1. The United States is not a party to any international convention governing the recognition and enforcement of foreign judgments.

*In 1976 the United States and United Kingdom initialed a "Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil Matters", 16 I.L.M. 71 (1977), but negotiations over the final text broke off in 1981.

*The United States participated in the negotiation of the "Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards", 18 I.L.M. 1224 (1979), but to date has not signed the treaty (nor is it expected to do so in the future).

2. Three multilateral money judgments conventions are, however, currently in force.

* Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended, 29 I.L.M. 1413 (1990) (among EC member states)

* Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 28 I.L.M. 620 (1989) (among EC and EFTA member states)

* Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards", 18 I.L.M. 1224 (1979) (among OAS member states). See also Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments, 24 I.L.M. 468 (1985).

*The European Union now has a regulation which generally governs the recognition and enforcement of civil and commercial judgments between its Member States (Council Regulation (EC) No 44/2001 of 22 December 2000 (OJ L 012, 1)) See:

<http://europa.eu.int/scadplus/leg/en/lvb/l33054.htm>

3. At the suggestion of the U.S. delegation, the Hague Conference on Private International Law agreed in 1992 to begin work on a multilateral judgments convention, the Convention on Jurisdiction and the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (Hague Convention). For more information on this topic, visit the State Department, Office of the Legal Adviser, Private International Law Section website, at: <http://www.state.gov/s/l/c3452.htm>

For the latest proposed text of this project, see: http://www.hcch.net/index_en.php?act=publications.index

* U.S. motivations for promoting the establishment of a multilateral judgments convention:

- a) Although U.S. state and federal courts have traditionally been quite liberal in recognizing and enforcing foreign judgments under state law (e.g., so long as there are no serious due process violations), U.S. judgments have not received similar treatment in foreign jurisdictions.

b) With the expansion of international business and increasing frequency of transnational litigation, the magnitude of the problem is likely to grow.

III. Enforcing U.S. Judgments Abroad

1. In the absence of an applicable bi- or multilateral convention, recognition and enforcement is determined in accordance with the "recognizing" country's domestic law.

* Common requirements for recognition and enforcement:

- a) proper notice
- b) proper jurisdiction (personal and subject matter)
- c) final and binding judgment
- d) no violation of "recognizing" country's public policy

2. Common obstacles to recognition and enforcement of U.S. judgments:

- a) **Lack of jurisdiction.** Brazil, Switzerland, and France, for example, will refuse to enforce a judgment against their nationals unless there is a "clear indication" that the national intended to submit to the foreign court's jurisdiction.
- b) **Special notice procedures.** Some "recognizing" countries require that the foreign litigant serve the "local" party in accordance with procedures not commonly employed in the United States.
- c) **Treaty requirement.** Several states, including most of the Nordic countries, the Netherlands, and Saudi Arabia, will refuse to recognize a foreign judgment absent the existence of a judgments convention between the "rendering" and "recognizing" jurisdictions.
- d) **Confusion over the lack of uniformity of U.S. law.** Foreign courts often cannot discern a "U.S. policy" on recognition and enforcement, i.e., because 51 different approaches exist.
- e) **Public policy concerns.** Foreign courts view such features of U.S. law as unrestricted jury awards, punitive and treble damages actions, and the use of long-arm statutes as contrary to their own public policy.

3. In certain circumstances, a U.S. party considering an action in a U.S. court against a foreign party may be better served by:

- (a) arbitrating the claim, particularly if the foreign party is resident in a state that is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly referred to as the "New York Convention") (See Federal Arbitration Act, 9 U.S.C. § 201-208); or
- (b) filing suit directly in the foreign jurisdiction.

For more detailed information on enforcing U.S. judgments abroad, see: http://travel.state.gov/law/enforcement_of_judgments.html

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