

Enforcing a Foreign Judgment and an Arbitration Award in the United States

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International Conventions on the Recognition of Foreign Judgments

- 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 the United Kingdom initiated the “Convention of the Reciprocal Recognition and Enforcement of Judgments in Civil Matters” but negotiations failed.
- Likewise, the U.S. also participated in the negotiation of the “Inter-American Convention on the Extraterritorial Validity of Foreign Judgments in Civil Matters” but there is no signed treaty.

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International Convention on the Enforcement of Foreign Arbitral Awards

- United States a signatory of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
(New York, 10 June 1958) known as the “New York Convention.”

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Enforcement of a Foreign Judgment

- The Uniform Foreign Money Judgment Recognition Act has been enacted in most of the states and covers recognition of foreign money judgments.
- The other uniform law that has been adopted in 22 jurisdictions is the Uniform Foreign Money Claims Act and covers the actual conversion of foreign money to US dollars.

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Ask the Following Questions

- Is the Non-U.S. judgment a “money” judgment?
- Can the money judgment be recognized?
- Will the money judgment be enforced?
- Which law controls the enforcement of the money judgment?

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Are you dealing with a Foreign “Money” Judgment

- The Uniform Foreign Judgments Act adopted in 32 state jurisdictions dictates whether the foreign judgment is a “money” judgment.
- It is normally obvious from the face of the judgment whether it is for the collection of money.

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Recognition of the Money Judgment

- Courts in the US will recognize money judgments that are **final**, **conclusive** and **capable** of being enforced in the foreign country (even though an appeal from the judgment is pending).
- Recognition means that the judgment will have *res judicata* and *collateral estoppel* effects.

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Recognition of the Money Judgment (cont'd)

- Defendant had a business office in the foreign state and the cause of action arose from defendant's operations there
- Defendant operated a motor vehicle or airplane in the foreign state and the proceedings and the cause of action arose therefrom
- Defendant had its principal place of business or was incorporated in the foreign state

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When Courts Will Not Recognize a Foreign Judgment

- If the judgment was not rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
- If the foreign court never had any personal jurisdiction over the defendant.
- If the foreign court did not have any jurisdiction over the subject matter of the case.

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When Courts Will Not Recognize a Foreign Judgment (Con't)

- If the defendant in the foreign proceeding did not have sufficient notice of the proceeding.
- If the judgment was obtained by fraud.
- If the cause of action on which the judgment is based is repugnant to public policy of the state where enforcement is sought.
- If the judgment conflicts with another final and conclusive judgment.

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When Courts will Not Recognize a Foreign Judgment (cont'd)

- If the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled other than by the proceedings in that court.
- In the case of jurisdiction based only upon personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

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Will the Money Judgment be Enforced?

- Figure out if the judgment can be enforced in the state where the judgment debtor's assets are located.
- Investigate by hiring a company to research where the assets are located.
- Research the local law on enforcement in the jurisdiction where you are seeking enforcement.

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Emergency Measures

- Used to prevent the dissipation of assets by the judgment debtor prior to enforcement of the judgment.
- Attachment/ Writ of Execution – seizes the defendant's property and prevents the defendant from using the property during the pendency of the action

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Emergency Measures (con't)

- Disclosure—by subpoena the judgment creditor can demand the turnover of certain documents, property or information from the judgment debtor.
- Injunction— used to preserve the status quo of the property

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Enforcement Options

- Varies from jurisdiction to jurisdiction
- Personal Property Execution
- Real Property Execution
- Bank Account levies/seizures
- Execution upon third-party debts
- Income Execution (usually operates against 10% of the income)
- Receivership

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Provisional Remedies

- There are temporary remedies which vary from jurisdiction to jurisdiction
- Attachment/ Writ of Execution
- Injunction
- Receivership; Insolvency
- Notice of Pendency
- Seizure of Chattel
- Seizure of a Person

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Sovereign Immunity

“Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the Secretary of the Treasury after certification by the Attorney General that it is in the interest of the United States to pay the same.”
28 U.S.C. §2414 see also, 28 U.S.C. §2680(k) or the Federal Tort Claims Act.

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Which Law Will Control?

- Since there is no federal law enacted— each state's law must be consulted before commencing an enforcement action in the United States.

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