Federal Judicial Center
International Litigation Guide

Recognition and Enforcement of Foreign Judgments

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I. Introduction

Recognition and enforcement of a judgment is usually the final goal in the litigation process. However, when a party asks to enforce a foreign judgment, the issue of recognition and enforcement may be the initial phase of this litigation in the United States. The law of recognition and enforcement of foreign judgments requires the U.S. court to consider both the foreign court's handling of the case, from jurisdiction onward, and the limitations on the U.S. court in affecting the resulting foreign judgment. While U.S. law is generally liberal in recognizing and enforcing foreign judgments, the judgment debtor does have tools available for contesting recognition and enforcement in U.S. courts.

The question of recognition of foreign judgments in U.S. courts arises most often in two types of cases. The first—and most common—is a case in which the judgment creditor seeks to enforce a foreign money judgment through access to local assets of the judgment debtor. In this situation, recognition precedes the enforcement of the judgment against the local assets. The second type of judgment recognition case does not involve enforcement, but involves a party seeking to have a U.S. court give preclusive effect to the judgment of a foreign court in order to prevent relitigation of claims and issues in the United States. In both types of cases, recognition of the foreign judgment promotes efficiency and avoids duplication of previous proceedings.

The substantive and procedural law on the recognition and enforcement of foreign judgments can be confusing for two reasons. First, while most state and federal court decisions on recognition of foreign judgments follow some version of the U.S. Supreme Court's comity analysis in *Hilton v. Guyot*,[1] this area is considered largely to be governed by state law. While substantive state law rules on recognition are generally uniform, in some states they are found in statutes, and in others they remain a matter of common law. In those states preserving a common law approach, both state and federal courts rely upon two sections of the Restatement (Third) of Foreign Relations Law.[2]

Second, when a judgment creditor seeks both recognition and enforcement of the foreign judgment, there is sometimes confusion over the interrelationship between the laws governing recognition of foreign judgments and those governing enforcement. Some states have adopted the 1962 Uniform Foreign Money-Judgments Recognition Act[3] and the 1964 Revised Uniform Enforcement of Foreign Judgments Act,[4] both promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Confusion about the interaction of the 1962 Recognition Act and the Enforcement Act has resulted in

1. 159 U.S. 113 (1895).
2. Restatement (Third) of Foreign Relations Law §§ 481, 482 (1987).
3. Hereinafter "1962 Recognition Act."
4. Hereinafter "Enforcement Act."

conflicting decisions as to whether recognition and enforcement of a foreign judgment may be accomplished through a simple registration procedure under state law or whether there must first be a separate action brought seeking a decision recognizing the foreign judgment. Most courts require that a separate action be brought for the recognition of a foreign judgment. A successful action then becomes a local judgment that is both enforceable under local law and entitled to full faith and credit in other courts within the United States.

U.S. courts have been quite liberal in their recognition and enforcement of foreign judgments. As a result, once the party seeking recognition of a foreign judgment has established the judgment's existence, the burden is generally on the party resisting recognition to prove grounds for non-recognition.

This guide addresses the questions that may arise when a party to litigation in federal court seeks to enforce a foreign judgment or to use a foreign judgment for preclusive effect in local litigation. Part II details the historical background of the applicable state law in recognition cases, and discusses the relationship between recognition and enforcement. It concludes with a brief review of the 1962 Recognition Act, the more recent 2005 Uniform Foreign-Country Money Judgments Recognition Act,[5] and the Restatement of Foreign Relations Law's provisions on foreign judgment recognition. Part III deals with issues important at the outset of any recognition case, including matters of scope under both Recognition Acts.

Part IV of this guide covers the generally accepted grounds on which a judgment may be denied recognition, noting the minor differences between the common law approach, which generally follows the Restatement of Foreign Relations Law, and the statutory approach resulting from the 1962 Recognition Act and the 2005 Recognition Act. Part V reviews common issues in applying the grounds for non-recognition, and Part VI discusses recent proposals and other developments that are likely to bring change to the law on recognition and enforcement of foreign judgments. Appendix A provides a list of questions and issues that may arise in a recognition case, along with cross-references to the part of the guide that addresses each issue. Appendix B presents descriptions of applicable sources of substantive law. Appendix C is a chart cataloging the differences between the two Recognition Acts and the Restatement rules in their grounds for recognition of a foreign judgment, and Appendix D is a chart reviewing state-by-state enactment of the Recognition Acts on recognition and enforcement.

The two Recognition Acts facilitate the recognition of a foreign judgment in a U.S. court, and provide legal certainty that helps facilitate the recognition and enforcement of U.S. judgments abroad. Other countries tend not to be as liberal as the United States in recognizing and enforcing foreign judgments. Some countries will recognize judgments only from countries with which they have a treaty. So far, the United States is not a party to any treaty on the recognition and enforcement of foreign judgments. Other countries require proof of reciprocity before

5. Hereinafter "2005 Recognition Act."

recognizing a foreign judgment. This reciprocity requirement is one of the driving reasons behind a state's enactment of the Recognition Acts, which makes proof of reciprocity easier to present to the foreign court than an explanation of state common law.

II. The Applicable Law in Federal Courts

A. Historical Roots of the Substantive Law: Hilton v. Guyot

Unlike a judgment from state or federal courts in the United States, judgments from foreign courts do not receive either the benefit of the Full Faith and Credit Clause in Article IV of the U.S. Constitution or the analogous federal statute found at 28 U.S.C. § 1738. There also is no general federal statute or treaty on foreign judgments recognition.

The historical foundation of all foreign judgments recognition law in the United States is Justice Gray's 1895 opinion in *Hilton v. Guyot*.[6] That opinion focused on both comity and due process.

> "Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor a mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.[7]

Justice Gray then went on to provide the foundation for all subsequent common law and statutory formulas for the recognition of foreign judgments, explaining that comity requires that:

> where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh.[8]

Even though the French judgment under consideration in *Hilton* met this test, the Supreme Court ultimately held that it was not entitled to recognition in the United States as a matter of international law.[9] Specifically, the Court determined that recognition of a foreign judgment required reciprocity—something that French law did not provide.[10]

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6. 159 U.S. 113 (1895).
7. *Id.* at 163–64.
8. *Id.* at 202–03.
9. *Id.* at 210–28.
10. *Id.*

B. Substantive Law in Diversity Cases

While *Hilton* seemed to create a federal common law rule, even before *Erie Railroad v. Tompkins*,[11] some state courts began to reject its reciprocity requirement.[12] After *Erie*, even federal courts have stated that the reciprocity element of the *Hilton* holding has "received no more than desultory acknowledgment" as a "condition precedent to the recognition of comity."[13] While *Erie* is invoked to apply state law in diversity cases, nonetheless, in both state and federal courts, the comity analysis of *Hilton* remains at the core of the inquiry in judgment recognition cases.

C. Substantive Law in Federal Question Cases

Despite the mostly uniform application of state law in diversity cases, there is no definitive authority on the source of law for foreign judgment recognition cases in federal courts exercising federal subject matter jurisdiction. Nevertheless, many cases have cited the comment found in the 1988 revision to the Restatement (Second) of Conflict of Laws § 98:

> The Supreme Court of the United States has never passed upon the question whether federal or State law governs the recognition of foreign nation judgments. The consensus among the State courts and lower federal courts that have passed upon the question is that, apart from federal question cases, such recognition is governed by State law and that the federal courts will apply the law of the State in which they sit. It can be anticipated, however, that in due course some exceptions will be engrafted upon the general principle. So it seems probable that federal law would be applied to prevent application of a State rule on the recognition of foreign nation judgments if such application would result in the disruption or embarrassment of the foreign relations of the United States. *Cf.* Zschernig v. Miller, 389 U.S. 429 (1968).[14]

This is consistent with the general rule in federal question cases: "Ordinarily, a federal court applies federal law on claim and issue preclusion in non-diversity cases."[15] From this practice, it has been extrapolated that, "in determining whether to recognize the judgment of a foreign nation, federal courts also apply their own standard in federal question cases."[16] Thus, federal question cases provide the exception to the normal use of state law for purposes of recognition of a foreign judgment.

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11. 304 U.S. 64 (1938).

12. *See* Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121 (1926).

13. Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 440 n.8 (3d Cir. 1971), *cert. denied,* 405 U.S. 1017 (1972).

14. Restatement (Second) of Conflict of Laws § 98 cmt. c (1988).

15. Hurst v. Socialist People's Libyan Arab Jamahiriya, 474 F. Supp. 2d 19, 32 (D.D.C. 2007). *See also* Heiser v. Woodruff, 327 U.S. 726, 733 (1946) ("It has been held in non-diversity cases since Erie R.R. Co. v. Tompkins that the federal courts will apply their own rules of res judicata."); Choi v. Kim, 50 F.3d 244, 248 n.7 (3d Cir. 1995).

16. *Hurst*, 474 F. Supp. 2d at 32; *Heiser*, 327 U.S. at 733.

D. Federal Procedure for Enforcement of Judgments

Recognition of foreign judgments and enforcement of foreign judgments are separate matters. As the discussion above indicates, the substantive law on recognition is rather uniform. However, there is confusion regarding the procedure for seeking enforcement of a judgment once it is recognized.

Most states have enacted the 1964 Revised Uniform Enforcement of Foreign Judgments Act, which outlines a procedure for enforcement of *sister state* judgments (see Appendix D). The use of the word "foreign" in the Enforcement Act's title has caused much confusion. In the Enforcement Act, the term "foreign judgments" refers to sister state judgments, while in the two Recognition Acts, it refers to foreign country judgments.

The 1962 Recognition Act provides that a foreign judgment, once recognized, "is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit,"[17] and the 2005 Recognition Act states that such a judgment is "enforceable in the same manner and to the same extent as a judgment rendered in this state."[18] In some states and in some federal courts, this provision of the 1962 Act has been interpreted to mean that the simplified registration procedure for enforcement found in the Enforcement Act is applicable to foreign judgments as well as to sister state judgments.[19] Florida included registration procedures in its adoption of the 1962 Recognition Act.[20] Most states, however, have applied the Enforcement Act only to sister state judgments and not to foreign country judgments.[21] Thus, any simplified system for enforcement applies only to the local judgment recognizing a foreign judgment, and not to the foreign judgment itself.

There is no general federal law governing the procedure for the enforcement of foreign judgments. Under Rule 69 of the Federal Rules of Civil Procedure, "[t]he procedure on execution . . . must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Thus, the confusion regarding the enforcement of a foreign judgment in state courts is also an issue in federal courts. Once a foreign judgment is recognized in a U.S. court judgment, however, the U.S. Marshals Service is available to enforce

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17. 1962 Recognition Act § 3.

18. 2005 Recognition Act § 7(2).

19. *See, e.g.,* Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000); Enron (Thrace) Exploration & Prod. BV v. Clapp, 378 N.J. Super. 8, 16, 874 A.2d 561, 566 (App. Div. 2005). *But see* Bianchi v. Savino De Bene Int'l Freight Forwarders, Inc., 329 Ill. App. 3d 908, 770 N.E.2d 684 (2002) (holding that a foreign judgment must be recognized before it can be enforced).

20. Fla. Stat. Ann. § 55.604 (West 2005). Hawaii had included a similar registration process in its adoption of the 1962 Recognition Act (Haw. Rev. Stat. Ann. § 658C-4 (1995 & Supp. 2001)), but the provision was omitted in its adoption of the 2005 Recognition Act.

21. *See* Baker & McKenzie Abvokatbyra v. Thinkstream Inc., 20 So. 3d 1109 (La. Ct. App. 2009); Becker v. Becker, 541 N.Y.S.2d 699 (Sup. Ct. 1989); Muitibanco Comermex, S.A. v. Gonzalez H., 129 Ariz. 321, 630 P.2d 1053 (Ct. App. 1981).

the ensuing writ of execution.[22] The reference to state enforcement in Rule 69 of the Federal Rules of Civil Procedure appears to allow the judgment to be enforced through state agencies as well.

The 2005 Recognition Act was designed in part to remedy the confusion over recognition procedures. Section 6 of the Act clearly adopts the separate action requirement for recognition, stating "the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment." This requirement has existed in most states under common law and the 1962 Recognition Act.[23] As a result, under the 2005 Act, "the issue of recognition always must be raised in a court proceeding."[24]

E. The Substantive Rules of State Law: The Restatement and the Uniform Recognition Acts

Current state law on the recognition of foreign judgments is a mix of common law and uniform acts. While some states have adopted one of the two existing versions of the Recognition Act, others continue to deal with the recognition of foreign judgments through common law principles reflected in the Restatement (Third) of Foreign Relations Law.

1. The Restatement (Third) of Foreign Relations Law

In 1986, the American Law Institute (ALI) adopted the Restatement (Third) of Foreign Relations Law. Section 481 stipulates:

> § 481. Recognition and Enforcement of Foreign Judgments
>
> (1) Except as provided in § 482, a final judgment of a court of a foreign state granting or denying recovery of a sum of money, establishing or confirming the status of a person, or determining interests in property, is conclusive between the parties, and is entitled to recognition in courts in the United States.
>
> (2) A judgment entitled to recognition under Subsection (1) may be enforced by any party or its successor or assigns against any other party, its successors or assigns, in accordance with the procedure for enforcement of judgments applicable where enforcement is sought.

Section 482 lists the mandatory and discretionary grounds for non-recognition of a foreign judgment:

> § 482. Grounds for Nonrecognition of Foreign Judgments
>
> (1) A court in the United States may not recognize a judgment of the court of a foreign state if:
>
> (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law; or
>
> (b) the court that rendered the judgment did not have jurisdiction over the defendant

22. *See* http://www.usmarshals.gov/process/execution-writ.htm.
23. 2005 Recognition Act § 6.
24. *Id.* at cmt. 1.

in accordance with the law of the rendering state and with rules set forth in § 421.

(2) A court in the United States need not recognize a judgment of a court of a foreign state if:

(a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;

(b) the defendant did not receive notice of the proceedings in sufficient time to enable him to defend;

(c) the judgment was obtained by fraud;

(d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought;

(e) the judgment conflicts with another final judgment that is entitled to recognition; or

(f) the proceeding in the foreign court was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.

Most states that have retained a common law approach to foreign judgments recognition follow the Restatement's comity approach. Building on the comity analysis of *Hilton v. Guyot*, the law of these states clearly provides for recognition of foreign money judgments, subject to the mandatory grounds for non-recognition in section 482(1) and the discretionary grounds in section 482(2).[25] Grounds for non-recognition also exist in the two Recognition Acts and are discussed in greater detail below.

2. The 1962 Uniform Foreign Money-Judgments Recognition Act

In 1962, the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated the 1962 Uniform Foreign Money-Judgments Recognition Act. The 1962 Recognition Act "applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal."[26] Section 3 of the 1962 Recognition Act makes any such judgment "conclusive between the parties to the extent that it grants or denies recovery of a sum of money."[27] Section 4 then sets out three mandatory grounds for non-recognition and six discretionary grounds for non-recognition. When no basis for non-recognition is available or a discretionary basis is denied, the foreign judgment is "enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit."[28]

3. The 2005 Uniform Foreign-Country Money Judgments Recognition Act

In July 2005, NCCUSL adopted a revised version of the 1962 Recognition Act, now called the 2005 Uniform Foreign-Country Money Judgments Recognition

25. Restatement (Third) of Foreign Relations Law § 482(1), (2) (1987).
26. 1962 Recognition Act § 2.
27. *Id.* § 3.
28. *Id.* § 4.

Act. The 2005 Recognition Act contains several significant changes to the 1962 Recognition Act. First, the 2005 Recognition Act directly addresses the question of procedure. It makes clear that if recognition of a foreign judgment is sought as an original matter, the judgment creditor must file an action to obtain recognition. A party may also raise the issue of recognition in a counterclaim, cross-claim, or defense, seeking preclusive recognition.[29] This clarification was included to prevent the confusion that existed between the 1962 Recognition Act and the Uniform Enforcement of Foreign Judgments Act, which applies only to sister state judgments.

The 2005 Recognition Act also contains clear rules on burden of proof. The party seeking recognition has the burden of proving that the judgment falls within the scope of the 2005 Recognition Act, while the party seeking non-recognition has the burden of proving any of the grounds available for non-recognition.[30]

Finally, the 2005 Recognition Act provides a specific statute of limitations for recognition of a foreign judgment. It prohibits recognition of a foreign judgment if the U.S. recognition action begins after the date on which the foreign judgment is no longer enforceable in the country of origin, or fifteen years from the time the judgment is effective in the country of origin, whichever is earlier.[31]

4. Further Comparisons of Current State Law Sources

The 2005 Recognition Act adds new grounds for non-recognition of a foreign money judgment, providing some of the most important differences between it and the 1962 Recognition Act. The chart in Appendix C offers a full comparison of the grounds for non-recognition under the Restatement, the 1962 Recognition Act, and the 2005 Recognition Act, and also indicates the grounds stated in the 2005 ALI Proposed Federal Statute.[32]

The Restatement and the Recognition Acts differ in the categorization of mandatory and discretionary grounds for non-recognition. Unlike the Restatement, the Recognition Acts include lack of subject matter jurisdiction in the originating court as a ground for mandatory non-recognition. Both Recognition Acts also add a discretionary ground for non-recognition based on a combination of tag jurisdiction (which would otherwise satisfy the personal jurisdiction requirement contained in the mandatory grounds) and a "seriously inconvenient forum."[33] This presents an interesting combination of a *forum non conveniens* analysis and an implied mistrust of tag jurisdiction, despite the U.S. Supreme Court's clear con-

29. 2005 Recognition Act § 6.

30. *Id.* §§ 3(c), 4(d).

31. *Id.* § 9.

32. Foreign Judgments Recognition and Enforcement Act § 9(b) (Proposed Federal Statute 2005).

33. *See* Burnham v. Superior Court of Cal., County of Marin, 495 U.S. 604, 623–25 (1990) (plurality opinion of Scalia, J.) (explaining history of jurisdiction based solely on service of process in the United States).

firmation that tag jurisdiction comports with requirements of due process in the domestic context.

The 2005 Recognition Act adds three discretionary non-recognition grounds not found in the 1962 Recognition Act. First, the 2005 Recognition Act changes the public policy basis for non-recognition in two ways. Under the 1962 Act, recognition could be denied if the cause of action was contrary to the public policy of the state. Under the 2005 Act, non-recognition is possible if (1) either the judgment or the cause of action is contrary to the public policy of (2) either the state or the United States. This is consistent with the Restatement position.

Section 4(c) of the 2005 Recognition Act also adds the following two new grounds for discretionary non-recognition:

> (7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
>
> (8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.[34]

The section 4(c)(7) basis for non-recognition "requires a showing of corruption in the particular case that had an impact on the judgment that was rendered."[35] Section 4(c)(8) effectively expands the section 4(b)(1) mandatory ground for non-recognition when the judicial system of the originating court does not provide impartial tribunals or due process. Thus, a court need not consider only the full judicial system, but may also inquire about the proceedings in the particular case.

III. Initial Issues in a Recognition Case

A. The Starting Point: A Final, Conclusive, and Enforceable Judgment

The starting point for recognition of a foreign judgment is the "generally recognized rule of international comity . . . that an American court will only recognize a final and valid judgment."[36] Both Recognition Acts apply only to judgments that are final, conclusive, and enforceable in the originating state.[37] Final judgments are defined as those that are not subject to additional proceedings in the rendering court except for execution.[38] When the foreign court's judgment is enforceable where rendered but subject to possible appeal, the U.S. court may—but is not required to—stay recognition until the conclusion of the foreign appeal.[39]

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34. 2005 Recognition Act § 4(c).

35. *Id.* § 4 cmt. 11.

36. Pilkington Bros. P.L.C. v. AFG Indus. Inc., 581 F. Supp. 1039, 1045 (D. Del. 1984).

37. 2005 Recognition Act § 3(a)(2); 1962 Recognition Act § 3.

38. Restatement (Third) of Foreign Relations Law § 481 cmt. e (1987).

39. 2005 Recognition Act § 8; 1962 Recognition Act § 6; Restatement (Third) of Foreign Relations Law § 481 cmt. e (1987).

Both the 1962 and 2005 Recognition Acts apply only to judgments that grant or deny a sum of money,[40] making the finality determination in these cases somewhat easier than in those dealing with issues more likely to fall under the category of equity in U.S. courts. The Restatement includes the possible recognition of foreign judgments "establishing or confirming the status of a person, or determining interests in property."[41] This demonstrates that the common law's scope of foreign judgments available for recognition is broader than that of both Recognition Acts.

B. Jurisdiction to Hear a Recognition Action

In *Shaffer v. Heitner*,[42] the Supreme Court stated in a footnote:

> Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.[43]

Notwithstanding this language, courts have split over the parameters of the due process requirements for jurisdiction in a recognition action.

On one end of the spectrum are cases such as *Lenchyshyn v. Pelko Electric, Inc.*,[44] in which the court held

> that the judgment debtor need not be subject to personal jurisdiction in New York before the judgment creditor may obtain recognition and enforcement of the foreign country money judgment, as neither the Due Process Clause of the United States Constitution nor New York law requires that the New York court have a jurisdictional basis for proceeding against a judgment debtor.[45]

This approach allows a recognition action to be brought whether or not the defendant had contacts with the forum state or had assets within the state against which the judgment could be enforced. In *Lenchyshyn*, the New York court went so far as to state that the judgment creditor "should be granted recognition of the foreign country money judgment," and "thereby should have the opportunity to pursue all such enforcement steps *in futuro*, whenever it might appear that defendants are maintaining assets in New York."[46]

On the other end of the spectrum are cases in which courts have held that attachment of assets of the judgment debtor within the state is not sufficient to pro-

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40. 2005 Recognition Act § 3(a)(1); 1962 Recognition Act § 1(2). Both acts explicitly exclude from their scope judgments for taxes, fines, or penalties, or support in matrimonial or family matters. *See* 2005 Recognition Act § 3(b); 1962 Recognition Act § 1(2).

41. Restatement (Third) of Foreign Relations Law § 481(1) (1987).

42. 433 U.S. 186 (1977).

43. *Id.* at 201 n.36.

44. 281 A.D.2d 42, 723 N.Y.S.2d 285 (2001).

45. 281 A.D.2d at 43, 723 N.Y.S.2d at 286.

46. 281 A.D.2d at 50, 723 N.Y.S.2d at 291.

vide jurisdiction, and that personal jurisdiction over the judgment debtor is necessary.[47]

In the middle are cases that find jurisdiction to be proper when either the defendant has sufficient personal contacts to satisfy the standard minimum contacts analysis or there are assets of the defendant in the forum state, even if those assets are unrelated to the claim in the underlying judgment.[48] This is the position followed by both the Restatement (Third) of Foreign Relations Law and the ALI Proposed Federal Statute.[49] The drafters of the 1962 and 2005 Recognition Acts do not take a position on jurisdictional requirements for recognition of a foreign judgment.[50]

C. Reciprocity

The Restatement and both Recognition Acts have specifically excluded any requirement that the judgment creditor demonstrate that the courts of the originating state would recognize and enforce a judgment of the courts of the recognizing state. Nonetheless, seven of the states that have enacted the 1962 Recognition Act and one that has enacted the 2005 Recognition Act have included reciprocity as a ground for recognition. Specifically, Florida, Idaho, Maine, North Carolina, Ohio, and Texas make reciprocity a discretionary ground for recognition, while Georgia and Massachusetts make it a mandatory ground.[51]

The ALI Proposed Federal Statute includes a reciprocity requirement, but places the burden of proof on the party resisting recognition and enforcement "to show that there is substantial doubt that the courts of the state of origin would

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47. *See, e.g.,* Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory," 283 F.3d 208 (4th Cir. 2002), *cert. denied*, 537 U.S. 822 (2002) (addressing recognition jurisdiction for purposes of recognizing and enforcing a foreign arbitral award).

48. *See, e.g.,* Pure Fishing, Inc. v. Silver Star Co., 202 F. Supp. 2d 905, 910 (N.D. Iowa 2002) ("the minimum contacts requirement of the Due Process Clause does not prevent a state from enforcing another state's valid judgment against a judgment-debtor's property located in that state, regardless of the lack of other minimum contacts by the judgment-debtor"; Electrolines v. Prudential Assurance Co., 260 Mich. App. 144, 163, 677 N.W.2d 874, 885 (2003) ("in an action brought to enforce a judgment, the trial court must possess jurisdiction over the judgment debtor or the judgment debtor's property").

49. The Restatement maintains that "a state has jurisdiction to adjudicate a claim on the basis of presence of property in the forum only where the property is reasonably connected with the claim[. A]n action to enforce a judgment may usually be brought wherever property of the defendant is found, without any necessary connection between the underlying action and the property, or between the defendant and the forum." Restatement (Third) of Foreign Relations Law § 481 cmt. h (1987). Similarly, section 9 of the ALI Proposed Federal Statute provides "(b) an action to recognize or enforce a judgment under this Act may be brought in the appropriate state or federal court: (i) where the judgment debtor is subject to personal jurisdiction; or (ii) where assets belonging to the judgment debtor are situated." Foreign Judgments Recognition and Enforcement Act § 9(b) (Proposed Federal Statute 2005).

50. 2005 Recognition Act § 6 cmt. 4.

51. For complete information, see the relevant statutes cited for each state in Appendix D.

grant recognition or enforcement to comparable judgments of courts in the United States."[52] The reciprocity requirement was included in the ALI project "not to make it more difficult to secure recognition and enforcement of foreign judgments, but rather to create an incentive to foreign countries to commit to recognition and enforcement of judgments rendered in the United States."[53]

D. Taxes, Fines, and Penalties—The Revenue Rule

Taxes, fines, and monetary penal judgments serve to raise revenue for public purposes, and they are considered in most countries to be matters of public law and therefore outside the scope of recognition and enforcement of judgments in private civil suits.[54] Both of the Recognition Acts maintain this widely acknowledged position by specifically excluding from their scope judgments for taxes, fines, or other penalties.[55]

The general test in the application of the revenue rule begins with the determination whether the nature of the judgment is remedial. If the judgment's benefits accrue to private individuals, the judgment is not remedial and thus not subject to the revenue rule.[56]

E. Domestic Relations Judgments

The 2005 Recognition Act expanded the 1962 Recognition Act's exclusion of judgments in "support in matrimonial or family matters"[57] from the Act's scope to more broadly cover judgments "for divorce, support, or maintenance, or other judgment[s] rendered in connection with domestic relations."[58] This change is designed "to make it clear that all judgments in domestic relations matters are excluded from the Act, not just judgments 'for support.'"[59] While the Recognition Acts do not require recognition of domestic relations judgments, they do not prohibit recognition. Domestic relations judgments may be recognized under common law principles of comity. Their preclusive effect can vary from that of other

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52. Foreign Judgments Recognition and Enforcement Act § 7(b) (Proposed Federal Statute 2005).

53. *Id.* § 7 cmt. b.

54. *See, e.g.,* The Antelope, 23 U.S. 66, 123 (1825) (Marshall, C.J.) ("The Courts of no country execute the penal laws of another"); Restatement (Third) of Foreign Relations Law § 483, n.3 (1987) ("Unless required to do so by treaty, no state enforces the penal judgments of other states").

55. 2005 Recognition Act § 3(b)(1) and (2); 1962 Recognition Act § 1(2).

56. *See, e.g.,* Chase Manhattan Bank, N.A. v. Hoffman, 665 F. Supp. 73 (D. Mass. 1987) (civil damages portion of Belgian judgment rendered in criminal proceedings, but in favor of private judgment creditor, was not penal and could be recognized and enforced).

57. 1962 Recognition Act § 1(2).

58. 2005 Recognition Act § 3(b)(3).

59. *Id.* at cmt. 4. The ALI Proposed Federal Statute would also exclude judgments in domestic relations matters. Foreign Judgments Recognition and Enforcement Act § 1(a)(i) (Proposed Federal Statute 2005).

money judgments because changes in the parties' economic circumstances can result in the adjustment of family support obligations. Thus, such judgments do not have the finality of other money judgments for which the recognition rules are generally developed.

A number of federal statutes and international agreements also affect the recognition of domestic relations judgments across borders. For example, the International Support Enforcement Act[60] establishes procedures for reciprocal recognition and enforcement of family support awards through principles of comity, allowing the Departments of State and Health and Human Services to designate reciprocating foreign countries that will honor U.S. child-support orders. Domestic relations treaties to which the United States is a party include the 1980 Hague Convention on the Civil Aspects of International Child Abduction[61] and the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.[62] The United States may also join and ratify in the future the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children.[63] In addition, the Uniform Child Custody Jurisdiction and Enforcement Act[64] and the Uniform Interstate Family Support Act[65] may both be applied to international cases.

IV. Grounds for Non-Recognition

This part reviews the grounds for non-recognition listed in the Restatement (Third) of Foreign Relations Law and the two Recognition Acts. There are some variations among the states in their adoption and application of the Recognition Acts, which require specific consultation of state laws in each case. The major variations are noted in the discussion below and in Appendix D.

A. Mandatory Grounds for Non-Recognition

1. Lack of Systemic Due Process

a. Determining the Threshold

The Restatement and both Recognition Acts provide for mandatory non-recognition when the judicial system from which the judgment originates does not provide impartial tribunals and due process of law.[66] Courts consistently have confined this recognition exception to its language, allowing relief only when the

60. 42 U.S.C. § 659a (1996).

61. Available at http://www.hcch.net/index_en.php?act=conventions.text&cid=24.

62. Available at http://www.hcch.net/index_en.php?act=conventions.text&cid=69.

63. Available at http://www.hcch.net/index_en.php?act=conventions.text&cid=70.

64. Available at http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/uccjea97.htm.

65. Available at http://www.law.upenn.edu/bll/archives/ulc/uifsa/final2001.htm.

66. 2005 Recognition Act § 4(b)(1); 1962 Recognition Act § 4(a)(1); Restatement (Third) of Foreign Relations Law § 482(1)(a) (1987).

system demonstrates the required defects, not when defects occur only in the specific case.[67] The procedures required in foreign adjudications in order to comply with due process requirements need not be identical to those employed in American courts.[68] They need only be "compatible with the requirements of due process of law."[69]

b. Sources of Evidence

Challenges to the recognition of foreign judgments based on allegations of a lack of an impartial judicial system generally involve evidence of clear partiality or a clear lack of evidence of partiality on the part of the foreign legal system. The result is a lack of any clear threshold that separates what is sufficient to produce non-recognition from what is not sufficient.

Mere allegations of differences in the originating legal system are insufficient to demonstrate the partiality required to deny recognition to a judgment. For example, in *Hilton v. Guyot*, the fact that, in the French court, (1) parties were permitted to testify without taking an oath, (2) parties were not subjected to cross-examination in the manner available in U.S. courts, and (3) documents were admitted that would not be admissible in U.S. courts, was insufficient to constitute grounds for finding a partial judiciary or the lack of due process: "[W]e are not prepared to hold that the fact that the procedure in these respects differed from that of our own courts is, of itself, a sufficient ground for impeaching the foreign judgment."[70] This approach has been followed in numerous cases.[71]

Some assistance in determining a threshold analysis of this issue may be gleaned from comparing three cases, dealing with judgments from Iran, Liberia, and Romania. In *Bank Melli Iran v. Pahlavi*,[72] the Ninth Circuit held that the Iranian judicial system did not provide impartial tribunals, particularly for a defendant related to the former Shah. In *S.C. Chimexim S.A. v. Velco Enterprises Ltd.*,[73]

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67. *See, e.g.,* Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000). *See also* Chevron Corp. v. Donziger, 768 F. Supp. 2d 581, 633 (S.D.N.Y. 2011) ("there is abundant evidence before the Court that Ecuador has not provided impartial tribunals or procedures compatible with due process of law, at least in the time period relevant here, especially in cases such as this"). For a discussion of the 2005 Recognition Act's discretionary ground for non-recognition as a result of defects in a specific proceeding, see *infra* Part IV.B.7.

68. Ingersoll Milling Mach. Co. v. Granger, 833 F.2d 680, 687 (7th Cir. 1987).

69. 2005 Recognition Act § 4(b)(1); 1962 Recognition Act, § 4(a)(1)

70. Hilton v. Guyot, 159 U.S. 113, 205 (1895).

71. *See, e.g.*, Ingersoll Milling Mach. Co. v. Granger, 833 F.2d 680 (7th Cir. 1987) (recognizing a Belgian judgment and stating that "the Uniform Act does not require that the procedures employed by the foreign tribunal be identical to those employed in American courts. The statute simply requires that the procedures be 'compatible with the requirements of due process of law.'"); Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972) (recognizing an English judgment despite different procedures and an award of damages would have been unavailable in a Pennsylvania court).

72. 58 F.3d 1406 (9th Cir. 1995).

73. 36 F. Supp. 2d 206 (S.D.N.Y. 1999).

the U.S. District Court for the Southern District of New York held that Romanian courts did provide litigants with impartial tribunals and afforded due process. In *Bridgeway Corp. v. Citibank*,[74] the Second Circuit held that the evidence demonstrated a lack of impartial tribunals and procedures incompatible with due processes in the Liberian courts.

i. The Foreign Constitution

In the *Bridgeway* and *Velco* cases, the appellate courts found that the constitution of the country producing the judgment provided for an impartial judiciary. In *Velco*, the court noted that the 1991 Romanian Constitution "sets forth certain due process guarantees, including procedural due process" and that "[t]here is a Judiciary Law that establishes the judiciary as an independent branch of government."[75] This, however, is not enough to prove the *actual* existence of an independent judiciary.

In *Bridgeway*, the court found that the Liberian Constitution "established a government modeled on that of the United States," and set forth judicial powers in a separate branch with justices and judges who have life tenure.[76] This finding was contested with evidence that "[t]hroughout the period of civil war, Liberia's judicial system was in a state of disarray and the provisions of the Constitution concerning the judiciary were no longer followed."[77] Thus, neither formal constitutional protections nor provisions modeled on U.S. due process and judicial independence measures are alone sufficient to save a judicial system that, in practice, is tainted.

ii. State Department Country Reports on Human Rights Practices

In both the *Bridgeway* and *Pahlavi* cases, the courts put substantial emphasis on statements contained in the U.S. State Department Country Reports on Human Rights Practices. In *Bridgeway*, the Second Circuit noted:

> The U.S. State Department Country Reports for Liberia during this period paint a bleak picture of the Liberian judiciary. The 1994 Report observed that "corruption and incompetent handling of cases remained a recurrent problem." The 1996 Report stated that, "the judicial system, already hampered by inefficiency and corruption, collapsed for six months following the outbreak of fighting in April."[78]

The court went on to observe that "all the district court's conclusions concerning [the issue of an impartial judiciary] can be derived from two sources: the affidavits of H. Varney G. Sherman . . . and the U.S. State Department Country Reports for Liberia for the years 1994–-1997."[79] The court found this sufficient to grant summary judgment denying recognition even in the face of two affidavits of ex-

74. 201 F.3d 134 (2d Cir. 2000).
75. 36 F. Supp. 2d at 214.
76. 201 F.3d at 137.
77. *Id.* at 138.
78. *Id.*
79. *Id.* at 142.

perts submitted by the opposing party. In particular, the court found that the Country Reports were admissible under Federal Rule of Evidence 803(8)(C), which allows the admission of "factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." The court found the Country Reports particularly reliable because

> [t]he Reports are submitted annually, and are therefore investigated in a timely manner. They are prepared by area specialists at the State Department. And nothing in the record or in Bridgeway's briefs indicates any motive for misrepresenting the facts concerning Liberia's civil war or its effect on the judicial system there."[80]

The *Pahlavi* court similarly looked at the Country Reports on Human Rights Practices, in addition to consular information sheets containing travel warnings, a 1991 State Department report on terrorism, and a 1990 declaration from a State Department official relating to Iran.[81] The 1986 Country Report on Human Rights Practices indicated that trials were rarely held in public, they were highly politicized, and individuals like the defendant, with close ties to the Shah's regime, "could not return to Iran without reprisals."[82] Like the *Bridgeway* court, the *Pahlavi* court relied on the Country Reports that clearly questioned the independence of the judiciary of the country involved.

iii. Expert Testimony

In *Pahlavi*, the only evidence presented by the party seeking recognition of the Iranian judgment was "information and belief declarations from their counsel."[83] This was determined to be insufficient to rebut the evidence submitted to support the allegation of lack of an impartial judiciary.

Expert testimony was also presented in both *Bridgeway* and *Velco*. In *Velco*, the court found that this evidence buttressed the formal provisions of the Romanian Constitution providing for an independent judiciary and procedural due process.[84] In *Bridgeway*, the court noted that an affidavit of Citibank's Liberian counsel supported the State Department Country Reports' evidence that the Liberian judiciary was not impartial.[85] The *Bridgeway* court found the Country Reports to be more reliable than the statements of two Liberian attorneys, including the former Vice President of the Liberian National Bar Association, offered by the party seeking recognition.[86]

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80. *Id.* at 143–44.
81. Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1411–12 (9th Cir. 1995).
82. *Id.* at 1412.
83. *Id.*
84. S.C. Chimexim S.A. v. Velco Enters. Ltd., 36 F. Supp. 2d 206, 241 (S.D.N.Y. 1999).
85. 201 F.3d at 142.
86. *Id.* at 142–44.

iv. Treaties

Treaties also were used in these cases as evidence for both the recognition and the denial of recognition of a foreign judgment. In *Velco*, the court relied in part on a 1992 trade relations treaty between the United States and Romania providing that "[n]ationals and companies of either [the United States or Romania] shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other [country]."[87] This was considered to be evidence supporting the formal provisions of the Romanian Constitution and unrebutted expert testimony that "[d]ue process and procedures compatible with the requirements of due process were accorded to the defendant."[88]

The *Pahlavi* court was faced with even more specific treaty provisions of the Algerian Accords, which stated that "the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law."[89] The court wrote that even an explicit treaty could not "remove[] due process considerations from the purview of the United States Courts."[90]

2. Lack of In Personam or In Rem Jurisdiction

a. Basic Issues

Lack of jurisdiction over the defendant or the property involved in the judgment is the most common ground for refusal to recognize or enforce a foreign judgment. Lack of personal jurisdiction is a mandatory ground for non-recognition under the Restatement and both Recognition Acts.[91]

Under the Recognition Acts, recognition may *not* be refused for lack of personal jurisdiction if

> (1) the defendant was served with process personally in the foreign country;[92]
>
> (2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
>
> (3) the defendant, before the commencement of the proceeding, 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 proceeding was 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;

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87. 36 F. Supp. 2d at 214.

88. *Id.*

89. Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1410 (9th Cir. 1995).

90. *Id.*

91. 2005 Recognition Act § 4(b)(2); 1962 Recognition Act § 4(a)(2); Restatement (Third) of Foreign Relations Laws § 482(1)(b) (1987).

92. Under § 4(c)(6) of the 2005 Recognition Act and § 4(b)(6) of the 1962 Recognition Act, if the action in the foreign state was based only on personal service, the court has discretion to deny recognition if "the foreign court was a seriously inconvenient forum for the trial of the action."

(5) the defendant had a business office in the foreign country and the proceeding 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 proceeding involved a [cause of action] [claim for relief] arising out of that operation.[93]

"Even if the rendering court had jurisdiction under the laws of its own state, a court in the United States asked to recognize a foreign judgment should scrutinize the basis for asserting jurisdiction" in light of U.S. rules governing jurisdiction to adjudicate,[94] focusing primarily on the due process analysis developed by the U.S. Supreme Court in *International Shoe* and its progeny.[95]

b. Jurisdictional Decisions of the Foreign Court

When the defendant appears voluntarily without contesting jurisdiction, both Recognition Acts provide that recognition cannot be refused for lack of personal jurisdiction.[96] This rule is tempered, however, by allowing a challenge to the originating court's jurisdiction where the appearance was "for the purpose of protecting property seized or threatened with seizure in the proceedings or contesting the jurisdiction of the court over the defendant."[97] This raises the question of what happens when the defendant challenges jurisdiction in the foreign court, loses on that challenge, and proceeds to defend on the merits.

A series of foreign judgment recognition cases in New York state and federal courts has given res judicata effect to the foreign court's determination of its own jurisdiction when the defendant contested personal jurisdiction in that foreign court, and the foreign court held that jurisdiction existed on grounds other than the defendant's appearance.[98] Those who chose to defend on the merits in these cases were held to the jurisdictional determination of the foreign court.

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93. 2005 Recognition Act § 5(a). The list in § 5(a) of the 1962 Recognition Act is virtually identical in language.

94. Restatement (Third) of Foreign Relations Law § 482 cmt. c (1987). *See, e.g.,* Koster v. Automark Indus., Inc., 640 F.2d 77 (7th Cir. 1981); Mercandino v. Devoe & Raynolds, Inc., 181 N.J. Super. 105, 436 A.2d 942 (Super. Ct. App. Div. 1981).

95. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154 (1945). *See also* J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011); Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011); Asahi Metal Indus. Co. v. Super. Ct. of Cal. Solano County, 480 U.S. 102, 107 S. Ct. 1026 (1987); World-Wide Volkswagen Corp. v. Woodsen, 444 U.S. 286, 100 S. Ct. 559 (1980).

96. 2005 Recognition Act § 5(a)(2); 1962 Recognition Act § 5(a)(2).

97. *Id.*

98. *See, e.g.,* S.C. Chemexin S.A. v. Velco, 36 F. Supp. 2d 206, 215 (S.D.N.Y. 1999) (recognizing Romanian judgment against U.S. defendant who failed to appear in original suit, but appealed, raising multiple grounds going to both the merits and personal jurisdiction); Nippon Emo-Trans Co., v. Emo-Trans, Inc., 744 F. Supp. 1215, 1222–26 (E.D.N.Y. 1990) (recognizing Japanese judgment against New York defendant who defended on the merits after losing on a jurisdictional challenge); CIBC Mellon Trust Co. v. Mora Hotel Corp., 100 N.Y.2d 215, 792 N.E.2d 155 (2003) (recognizing English judgment where defendants had contested jurisdiction but then defended on the merits).

Courts outside of New York have permitted the defendant in a recognition action to relitigate personal jurisdiction, despite the foreign court's determination that jurisdiction is proper. That is, if the judgment debtor unsuccessfully challenges personal jurisdiction and continues to litigate in the foreign court, the issue is not deemed waived. The judgment debtor may again challenge personal jurisdiction in the U.S. action for judgment recognition, and the analysis would apply U.S. concepts of jurisdiction, rather than those applied in the originating foreign court.[99]

The New York approach grants preclusive effect to a foreign court's determination of personal jurisdiction—a finding that may directly contravene U.S. concepts of due process. There is a difference between granting preclusive effect to a foreign court's ruling on the substance of a dispute and accepting that court's jurisdictional determination—a practice that implicates the U.S. Constitution under our law of foreign judgments recognition.

Following the Restatement and Recognition Acts, if the foreign court had no personal jurisdiction pursuant to U.S. due process analysis, the foreign judgment will not be recognized. Foreign courts apply their own rules of jurisdiction, and these rules may not be consistent with U.S. practice. Logically, then, under the Restatement and the Recognition Acts, there is not a foreign jurisdictional ruling that can be given preclusive effect in U.S. courts. This is the position taken in comments to the ALI Proposed Statute.[100]

c. Lack of In Rem Jurisdiction

The question of in rem jurisdiction was addressed by the *Hilton* Court in dicta.[101] Because U.S. courts generally consider monetary judgments to be in personam rather than in rem,[102] a court must obtain personal jurisdiction over the parties before it can grant an award of money,[103] and thus come within the scope of the Recognition Acts.

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99. *See, e.g.,* Agnitsch v. Process Specialists, Inc., 318 F. Supp. 2d 812, 813 (S.D. Iowa 2004) (determining that genuine issues of fact regarding defendant's minimum contacts with Malaysia existed, despite judgment debtor's continued involvement in proceedings after an unsuccessful jurisdictional challenge in Malaysian courts).

100. "[A]n appearance by the defendant in the rendering court, or an unsuccessful objection to the jurisdiction of the rendering court, does not deprive the defendant of the right to resist recognition or enforcement." Foreign Judgments Recognition and Enforcement Act § 6(c) (Proposed Federal Statute 2005). *See also Id.* § 4 cmt. d ("[T]he foreign court's determination of jurisdiction under its own law is not again subject to challenge in the United States. However, the party resisting recognition or enforcement is entitled to show that the basis of jurisdiction asserted in the foreign court does not meet U.S. standards.").

101. Hilton v. Guyot, 159 U.S. 113, 167–68 (1895) ("a judgment in foreign attachment is conclusive, as between the parties, as of the right to the property or money attached").

102. *See* Cherun v. Frishman, 236 F. Supp. 292, 294 (D.D.C. 1964).

103. *See* China Mut. Ins. Co. v. Force, 36 N.E. 874, 876 (N.Y. 1894).

3. Lack of Subject Matter Jurisdiction

Lack of subject matter jurisdiction is a mandatory ground for non-recognition in both Recognition Acts, and a discretionary ground in the Restatement.[104] The few cases addressing subject matter jurisdiction tend to discuss it in a pro forma manner, ultimately finding jurisdiction to exist.[105] In contrast to the test for personal jurisdiction, where U.S. courts apply U.S. legal concepts to foreign court determinations, when ruling on the question of subject matter jurisdiction, U.S. courts apply the jurisdictional rules of the foreign court.[106]

B. Discretionary Grounds for Non-Recognition

1. Denial of Notice and Opportunity To Be Heard

Courts have required proper notice, generally in the form of proper service of process, as a prerequisite to granting recognition or enforcement of a foreign judgment.[107] Proper service has been given two possible definitions. The first focuses on procedural rules and defines proper service as compliance with the foreign country's statutory notice provisions.[108] The second focuses on constitutional concerns and defines proper service as that which gives adequate notice of the proceedings.[109] Courts are unlikely to find inadequate notice of the proceedings where service was proper and the defendant is represented by council.[110]

2. Fraud

Fraud is a defense to the recognition of a foreign judgment.[111] Generally, a foreign judgment can be impeached only for extrinsic fraud, which deprives the aggrieved party of an adequate opportunity to present its case to the court.[112] If a

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104. 2005 Recognition Act § 4(b)(3); 1962 Recognition Act § 4(a)(3); Restatement (Third) of Foreign Relations Law § 482(2)(a) (1987).

105. *See, e.g.,* Hunt v. BP Exploration Co. (Libya), 492 F. Supp. 885, 898 (N.D. Tex. 1980), *abrogated on other grounds by* Success Motivation Inst. of Japan Ltd. v. Success Motivation Inst., Inc., 966 F.2d 1007 (5th Cir. 1992), *and* Tucker v. Nakagawa Sangyo Japan, 2007 WL 2407236 at *2 (W.D. Ky. 2007) (declining to use federal common law because of foreign relations matters and instead using state law).

106. *See, e.g.,* Charles W. Joiner, *The Recognition of Foreign Country Money Judgments by American Courts*, 34 Am. J. Comp. L. Supp. 193, 203 (1986). *See also* Robert B. von Mehren & Michael E. Patterson, *Recognition and Enforcement of Foreign-Country Judgments in the United States*, 6 Law & Pol'y Int'l Bus. 37, 54–55 (1974).

107. *See, e.g.,* Corporacion Salvadorena de Calzado v. Injection Footwear Corp., 533 F. Supp. 290 (S.D. Fla. 1982).

108. *See, e.g.,* Tahan v. Hodgson, 662 F.2d 862 (D.C. Cir. 1981).

109. *Id.*

110. *See, e.g.,* Laskosky v. Laskosky, 504 So. 2d 726 (Miss. 1987).

111. *See, e.g.,* Hilton v. Guyot, 159 U.S. 113, 205 (dicta); Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 442 (1971), *cert. denied*, 405 U.S. 1017 (1972).

112. *See* United States v. Throckmorton, 98 U.S. 61, 65 (1878); Laufer v. Westminster Brokers, Ltd., 532 A.2d 130 (D.C. App. 1987).

foreign plaintiff withheld from the foreign court material evidence that was favorable to the U.S. defendant, this would be considered extrinsic fraud sufficient to deny recognition.[113]

In most cases, a judgment cannot be impeached for intrinsic fraud, which involves matters passed upon by the original court, such as the veracity of testimony and the authenticity of documents.[114] If the foreign court has actually considered and ruled upon an allegation of fraud, whether extrinsic or intrinsic, the facts bearing on that issue may not be reexamined by the U.S. court in an enforcement proceeding.[115]

Section 4(b)(2) of the 1962 Recognition Act allows courts the discretion to deny recognition of foreign judgments "obtained by fraud" without specifying whether extrinsic fraud is necessary.[116] The 2005 Recognition Act elaborates further on the fraud issue, and provides the following as a basis for non-recognition of a foreign judgment: "the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case."[117] The comments to the 2005 Recognition Act maintain that "[i]ntrinsic fraud does not provide a basis for denying recognition under subsection 4(c)(2), as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court."[118]

3. Public Policy

a. Generally

U.S. courts are not required to recognize or enforce a foreign judgment that contravenes public policy.[119] However, courts seldom deny recognition of such judgments unless the policy involved has constitutional dimensions. Mere differences between the foreign and U.S. forums in policy or procedure will not normally rise to the level of public policy concern required to deny recognition.[120]

b. First Amendment Cases

One area in which the public policy exception has been successful is First Amendment rights, and, in particular, the law of defamation. In *Bachchan v. India*

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113. De La Mata v. Am. Life. Ins. Co., 771 F. Supp. 1375, 1377–90 (D. Del. 1991).

114. *See, e.g.,* MacKay v. McAlexander, 268 F.2d 35, 39 (9th Cir. 1959) (stating that fraud in obtaining a Canadian naturalization decree by false statements was not grounds for denial of recognition).

115. *See, e.g.,* Harrison v. Triplex Gold Mines, 33 F.2d 667 (1st Cir. 1929).

116. 1962 Recognition Act § 4(b)(2).

117. 2005 Recognition Act § 4(c)(2).

118. *Id.* at cmt. 7.

119. *See, e.g.,* Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 443 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972).

120. *See, e.g.,* Hilton v. Guyot, 159 U.S. 113, 204–05 (1895) (procedures of the French courts that admitted hearsay and testimony not under oath and that denied the defendants the right to cross-examine witnesses did not constitute an offense to public policy); *Somportex Ltd.,* 453 F.2d at 443 (English judgment enforced when substantial portion was compensatory damages for loss of goodwill and for attorney fees, items for which Pennsylvania law did not allow recovery).

Abroad Publications Inc.,[121] an Indian plaintiff sued a foreign news agency in the United Kingdom for libel based on its reporting of events that occurred in India. The court found that under United Kingdom libel law, "any published statement which adversely affects a person's reputation, or the respect in which that person is held, is *prima facie* defamatory" and that "[p]laintiff['s] only burden is to establish that the words complained of refer to them, were published by the defendant, and bear a defamatory meaning."[122] This approach to defamation was determined to be contrary to U.S. First Amendment law, which places the burden on the plaintiff to prove the defendant's words to have been false and protects the right of the press to "publish speech of public concern."[123] Denying recognition of the English judgment, the *Bachchan* court noted the different burden of proof applied in United Kingdom libel cases. The court concluded that enforcing a foreign judgment in which constitutional standards were not met would have the same "chilling effect" on speech as would an equivalent determination of liability in a U.S. court.[124]

The *Bachchan* case was followed in *Telnikoff v. Matusevitch*,[125] a case in which a libel judgment had been obtained in England by one Russian émigré against another regarding a letter authored by one of them in the *Daily Telegraph*. The Maryland court, on certification from the federal district court, determined that Maryland public policy prevented the recognition of the English libel judgment because of the reverse burden of proof in England and the English court's failure to consider the public context of the statements made.[126]

These cases involved defects in foreign proceedings that implicated U.S. constitutional concerns and triggered public policy grounds for non-recognition. The *Bachchan* court noted that public policy usually is a discretionary ground for non-recognition, but went on to state that "if . . . the public policy to which the foreign judgment is repugnant is embodied in" the Constitution, "the refusal to recognize the judgment should be, and it is deemed to be, 'constitutionally mandatory.'"[127]

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121. 585 N.Y.S.2d 661 (Sup. Ct. 1992).

122. *Id.* at 663.

123. *Id.* at 664.

124. *Id.* at 664–65.

125. 347 Md. 561, 702 A.2d 230 (1997), *aff'd (table)*, 159 F.3d 636 (D.C. Cir. 1998).

126. *See also* Sarl Louis Feraud Int'l v. Viewfinder, Inc., 489 F.3d 474 (2d Cir. 2007) (remanding for decision on whether facts demonstrated fair use under copyright laws, which would be protected by First Amendment); Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 169 F. Supp. 2d 1181, 1189–90 (N.D. Cal. 2001) (court refusing to recognize French judgment in case invoking a law that prohibits Nazi propaganda because such a law would violate the First Amendment), *rev'd on other grounds*, 433 F.3d 1199 (9th Cir. 2006) (en banc).

127. Bachchan v. India Abroad Publ'ns Inc., 585 N.Y.S.2d 661, 662 (Sup. Ct. 1992) (quoting David D. Siegel, Practice Commentaries, McKinnet's Consol. Laws of N.Y., Book 7B, C.P.L.R. C5304:1).

4. Inconsistent Judgments

Inconsistent judgments may arise in the context of either two conflicting foreign judgments or a foreign judgment in conflict with a judgment from another U.S. court. Although U.S. courts have at times recognized the later of two inconsistent foreign judgments, they may recognize the earlier one instead.[128] When a foreign judgment is otherwise entitled to recognition but conflicts with an earlier U.S. sister state judgment, U.S. courts are not required to give priority to the sister state judgment.[129]

5. Choice of Court Clauses: Judgments Contrary to Party Agreement

In *The Bremen v. Zapata Offshore Co.*,[130] the U.S. Supreme Court stated clear support for the enforcement of forum-selection clauses in international contracts. Foreign judgments obtained in an effort to evade jurisdiction in the forum originally agreed to by the parties are likely to be enforced in U.S. courts only in rare circumstances.[131] Both Recognition Acts specifically provide for discretionary non-recognition of a judgment when "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."[132]

The law on recognition of foreign judgments and choice of court agreements will change significantly if the United States proceeds to ratify the 2005 Hague Convention on Choice of Court Agreements. That Convention, discussed *infra* at Part VI.A., will create a treaty obligation to enforce exclusive choice of court agreements and to recognize judgments resulting from jurisdiction based on those agreements. This would make U.S. courts' non-recognition of a judgment obtained in violation of an exclusive choice of court agreement mandatory.

6. Inconvenient Forum

The *forum non conveniens* provision in section 4 of the Recognition Acts authorizes refusal of recognition of a foreign judgment when, "in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action."[133] This provision does not require that the foreign

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128. Restatement (Third) of Foreign Relations Law § 482 cmt. g (1987). *See, e.g.,* Byblos Bank Eur., S.A. v. Sekerbank Turk Anonym Syrketi, 885 N.E.2d 191, 194 (N.Y. 2008) (rejecting application of New York's last-in-time rule for sister state judgments in favoring earlier Turkish judgment over later Belgian judgment where "the last-in-time court departed from normal res judicata principles by permitting a party to relitigate the merits of an earlier judgment").

129. Restatement (Third) of Foreign Relations Law § 482 cmt. g (1987). *See* Ackerman v. Ackerman, 517 F. Supp. 614, 623–26 (S.D.N.Y. 1981), *aff'd*, 676 F.2d 898 (2d Cir. 1982) (indicating that a later foreign judgment would be enforced notwithstanding a conflict with an earlier sister state judgment entitled to full faith and credit).

130. 407 U.S. 1 (1972).

131. *See* Restatement (Third) of Foreign Relations Law § 482 cmt. h (1987).

132. 2005 Recognition Act § 4(c)(5); 1962 Recognition Act § 4(b)(5).

133. 2005 Recognition Act § 4(c)(6); 1962 Recognition Act § 4(b)(6).

court recognize the doctrine of *forum non conveniens* as it is applied in U.S. courts. Rather, it allows the recognizing U.S. court effectively to determine that, if the foreign court did recognize the doctrine, the foreign court should have dismissed on grounds of serious inconvenience.[134] No similar discretionary ground for non-recognition is found in the Restatement. The Recognition Acts' *forum non conveniens* exception is both discretionary and limited. It is available only when personal jurisdiction is based solely on personal service. If jurisdiction is based on any other ground that satisfies due process, recognition may not be refused simply because the foreign court was a seriously inconvenient forum.[135]

7. Integrity of the Individual Rendering Court

The 2005 Recognition Act provides a discretionary basis for non-recognition of a foreign judgment if "the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment."[136] This discretionary ground for non-recognition is broader than the mandatory ground for non-recognition of a judicial system failing to provide due process or impartial tribunals. This discretionary ground applies to instances where the court in a particular case failed to meet such standards.[137] That is, even if the judicial system in which the judgment arose is not defective, recognition may be denied if the judgment debtor can prove a defect, such as partiality, bribery, or lack of fairness, in the particular proceedings that demonstrates "sufficient impact on the ultimate judgment as to call it into question."[138]

8. Due Process Problems in Specific Proceedings

Section 4(c)(8) of the 2005 Recognition Act allows discretionary non-recognition when "the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law."[139] This provision is designed to work together with section 4(c)(7) to allow non-recognition as a result of case-specific defects that raise questions about either the integrity of the court in the specific proceedings or the compatibility of those proceedings with due process requirements.

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134. *See, e.g.,* Bank of Montreal v. Kough, 430 F. Supp. 1243, 1250–51 (N.D. Cal. 1977), *aff'd,* 612 F.2d 467 (1980).

135. *See* Colonial Bank v. Worms, 550 F. Supp. 55 (S.D.N.Y. 1982).

136. 2005 Recognition Act § 4(c)(7).

137. *See supra* Part IV.A.1 for a discussion of the systemic basis for non-recognition.

138. 2005 Recognition Act § 4(c)(7) cmt. 11.

139. *Id.* § 4(c)(8).

V. Issues Beyond the Grounds for Non-Recognition

A. Default Judgments

"In the absence of fraud or collusion, a default judgment is as conclusive an adjudication between the parties as when rendered after answer and complete contest in the open courtroom."[140] Thus, any decision on the merits that could have been litigated in the originating court will have preclusive effect in the recognizing court. This does not prevent challenges based on lack of personal jurisdiction or lack of proper notice in the originating court, or other grounds for non-recognition otherwise available under the applicable statute or common law.

B. Burden of Proof

The 1962 Recognition Act does not contain specific provisions on burden of proof. Burden of proof issues may arise at several stages in the recognition process. At the outset, the court is faced with the question whether the action is within the scope of the 1962 Recognition Act. Cases decided under the that Act tend to place the burden on the party seeking recognition of the foreign judgment.[141] Section 3(c) of the 2005 Recognition Act makes clear that "[a] party seeking recognition of a foreign-country judgment has the burden of establishing that this [Act] applies to the foreign-country judgment."[142]

The burden is reversed once it is established that the judgment is within the scope of the 2005 Recognition Act—that is, the judgment is final, conclusive, and enforceable where rendered, and is not a judgment for taxes, fines, penalties, or domestic relations relief. Section 4(d) provides that "[a] party resisting recognition of a foreign-country judgment has the burden of establishing" both mandatory and discretionary grounds for non-recognition.[143]

The ALI Proposed Federal Statute parallels the 2005 Recognition Act by placing the burden on the party resisting recognition or enforcement with respect to all "defenses" in section 5 except one. Specifically, if the judgment is challenged as being "contrary to an agreement under which the dispute was to be determined in

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140. Somportex Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 441 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972). As discussed above, state law often will apply in enforcement actions, making it important to look at the law of the state in which the federal court sits in determining the recognition and enforceability of a default judgment. As the *Somportex* case indicates, however, the existence of diversity jurisdiction often results in state law being developed in federal courts that must attempt to approximate what a state court would have decided in a similar case.

141. *See, e.g.,* Bridgeway Corp. v. Citibank, 45 F. Supp. 2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition has burden of establishing that judgment is final, conclusive, and enforceable where rendered); S.C. Chimexim S.A. v. Velco Enters., Ltd., 36 F. Supp. 2d 206, 212 (S.D.N.Y. 1999) (party seeking recognition has burden of proving conclusiveness of judgment).

142. 2005 Recognition Act § 3(c).

143. *Id.* § 4(d).

another forum, the party seeking recognition or enforcement shall have the burden of establishing the inapplicability or invalidity of the agreement."[144]

C. Statute of Limitations

Neither the Restatement nor the 1962 Recognition Act addresses the question of a statute of limitations. Some courts have applied the recognizing state's general statute of limitations.[145] The trend, however, appears to be to apply the statute of limitations applicable to enforcement of a comparable domestic judgment. Courts have based this practice, in part, on the reference in the 1962 Recognition Act to application of the same procedures for enforcement as those that apply to a sister state judgment.[146]

The 2005 Recognition Act includes a specific statute of limitations, providing that "[a]n action to recognize a foreign-country judgment must be commenced within the earlier of (i) the time during which the foreign-country judgment is effective in the foreign country, or (ii) 15 years from the date that the foreign-country judgment became effective in the foreign country."[147] A party may use a foreign judgment that is beyond this statute of limitations for preclusive effect, if such use is permitted under the forum state's law.[148]

The ALI Proposed Federal Statute contains a ten-year statute of limitations, running "from the time the judgment becomes enforceable in the rendering state, or in the event of an appeal, from the time when the judgment is no longer subject to ordinary forms of review in the state of origin."[149]

D. Judgments and Arbitral Awards

The recognition and enforcement of foreign arbitral awards are governed by federal statute and treaty. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)[150] is implemented by chapter 2 of the U.S. Arbitration Act,[151] and the Inter-American Convention on the Recognition and Enforcement of Foreign Arbitral Awards is

144. Foreign Judgments Recognition and Enforcement Act §§ 5(b)(i), 5(d) (Proposed Federal Statute 2005).

145. *See, e.g.,* Attorney Gen. of Can. On Behalf of Her Majesty the Queen in Right of Can. v. Tysowksi, 118 Idaho 737, 800 P.2d 133 (Ct. App. 1990).

146. *See, e.g.,* La Societe Anonyme Goro v. Conveyor Accessories, Inc., 677 N.E.2d 30 (Ill. App. Ct. 1997).

147. 2005 Recognition Act § 9.

148. *Id.* § 9 cmt. 2.

149. Foreign Judgments Recognition and Enforcement Act § 2(c) (Proposed Federal Statute 2005).

150. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38, available at http://www.uncitral.org/uncitral/en/uncitral_texts/ arbitration/NYConvention.html.

151. 9 U.S.C. §§ 201–208.

implemented by chapter 3 of the same Act.[152] These conventions and implementing statutes require that U.S. courts honor both the agreement to arbitrate and the resulting award, with limited exceptions. Neither the Restatement nor the Recognition Acts include a clear resolution of a possible conflict between a foreign judgment and a foreign arbitral award.[153]

VI. Recent Developments That May Affect Future Law

As noted throughout this guide, the law governing the recognition and enforcement of foreign judgments continues to evolve at the state, federal, and international levels. Reform efforts include the 2005 Hague Convention on Choice of Court Agreements, the 2005 ALI Proposed Federal Statute, and an ongoing project of NCCUSL to create a Uniform Choice of Court Agreement Act that would serve as state-by-state implementing legislation for the 2005 Hague Convention. These developments are discussed briefly here to provide notice of possible new developments in this area.

A. The 2005 Hague Convention on Choice of Court Agreements

The 2005 Hague Convention on Choice of Court Agreements is the product of the Hague Conference on Private International Law.[154] As of early 2012, Mexico was the only party to the Convention, but both the United States and the European Community had signed, indicating their intent to ratify or accede to the Convention in the future.[155]

Three basic rules provide the structure of the Hague Convention on Choice of Court Agreements:

1. the court chosen by the parties in an exclusive choice of court agreement has jurisdiction; [156]

2. if an exclusive choice of court agreement exists, a court not chosen by the parties does not have jurisdiction, and shall decline to hear the case;[157] and

3. a judgment resulting from jurisdiction exercised in accordance with an exclusive

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152. 9 U.S.C. §§ 301–307.

153. *See, e.g.,* Baker Marine (Nigeria) Ltd. v. Chevron (Nigeria) Ltd., 191 F.3d 194 (2d Cir. 1999) (choosing to recognize foreign judgment setting aside foreign arbitral award); Chromalloy Aeroservices v. Arab Republic of Egypt, 939 F. Supp. 907 (D.D.C. 1996) (enforcing foreign arbitral award despite Egyptian judgment annulling the award).

154. The Hague Conference on Private International Law is an international organization devoted to the development of multilateral instruments designed to improve the legal framework for international legal cooperation and litigation; international protection of children, family, and property relations; and international commercial and finance law.

155. The status table for the 2005 Hague Convention on Choice of Court Agreements is available at http://www.hcch.net/index_en.php?act=conventions.status&cid=98.

156. Hague Convention on Choice of Court Agreements art. 5, June 30, 2005, available at http://www.hcch.net/index_en.php?act=conventions.text&cid=98.

157. *Id.* at art. 6.

> choice of court agreement shall be recognized and enforced in the courts of other Contracting States.[158]

If the United States ratifies the Hague Convention on Choice of Court Agreements, it will be the first U.S. treaty with the recognition and enforcement of foreign judgments as a principal focus. While the New York Convention allows for recognition and enforcement of arbitration agreements and awards in over 130 Contracting States,[159] no such global convention exists for the recognition and enforcement of judgments.

Article 9 of the Hague Convention on Choice of Court Agreements contains a list of grounds for non-recognition of judgments, similar to those found in the Restatement and Recognition Acts. Because the Hague Convention is focused only on consent of the parties as a basis for jurisdiction, jurisdictional grounds for non-recognition of a judgment are inapplicable. Jurisdiction is established at the outset. Article 9 allows non-recognition of a judgment in the event of (a) invalidity of the choice of court agreement, (b) lack of party capacity, (c) lack of proper notice or service of process, (d) fraud, (e) manifest incompatibility with public policy of the recognizing state, (f) inconsistency with a recognizing state judgment, or (g) inconsistency with a foreign judgment.[160]

As of early 2012, the final method for U.S. ratification and implementation of the Convention had not yet been determined. While the New York Arbitration Convention has been implemented through federal law, providing national uniformity and a single source of final interpretive authority (the United States Supreme Court), the National Conference of Commissioners on Uniform State Laws has drafted a Uniform Choice of Court Agreement Act designed to provide state law applicable within the Convention framework.[161] While it would be expected that states would not vary the terms of the Uniform Act, and that federal law would apply in states that failed to enact the Uniform Act (and preempt state law where inconsistent), the ultimate authority on each state's statute would be its own supreme court. Thus, federal courts may be required to continue to look to state law on judgments recognition issues, even when governed by a treaty. The final allocation of authority for source of law will depend on the final federal implementing legislation, which was not yet drafted when this guide was written.

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158. *Id.* at art. 8.

159. See the discussion of arbitration, *supra* Part V.D.

160. Hague Convention on Choice of Court Agreements art. 9(a)–(g), June 30, 2005.

161. *See* NCCUSL, Uniform Choice of Court Agreement Act, 2009 Annual Meeting Draft, which was given its first reading at the Annual Meeting of the National Conference of Commissioners on Uniform State Laws, July 9–16, 2009. While the normal NCCUSL process would have resulted in completion of a new uniform act upon the second reading in July 2010, this process was postponed in order to cooperate with the Department of State on the full process of "cooperative federalism" contemplated in the draft Uniform Act. Drafts and information on the work of the relevant Drafting Committee are available at http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=318.

The Hague Convention would make recognition of foreign judgments relatively more certain when the parties had entered into a choice of court agreement.[162] While the Restatement and Recognition Acts provide for discretionary non-recognition of judgments rendered in contravention of a valid choice of court agreement, the Convention would both compel recognition of judgments resulting from choice of court agreement jurisdiction and prohibit litigation in a court not chosen (with limited exceptions). It would also make the recognition and enforcement of judgments from U.S. courts easier in foreign courts.

B. The 2005 ALI Proposed Federal Statute on the Recognition and Enforcement of Foreign Judgments

The second major effort to federalize the law of foreign judgments recognition resulted in the 2005 ALI Proposed Federal Statute on Recognition and Enforcement of Judgments. This project was based on the following propositions: (1) the federal government has the authority "as inherent in the sovereignty of the nation, or as derived from the national power over foreign relations shared by Congress and the Executive, or as derived from the power to regulate commerce with foreign nations," to govern the recognition and enforcement of foreign judgments;[163] and (2) "a coherent federal statute is the best solution" for addressing "a national problem with a national solution."[164] Provisions of the Proposed Federal Statute that vary from the existing law on the recognition and enforcement of judgments are discussed throughout this guide.

C. Recognition and Enforcement of Foreign Libel Judgments

On August 10, 2010, President Obama signed into law the "Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act."[165] This followed the 2008 enactment in New York of the "Libel Terrorism Protection Act."[166] These laws respond (1) to foreign libel laws (particularly those of the United Kingdom) which make proof of libel much easier than is possible in the United States under the First Amendment to the U.S. Constitution, and (2) to cases such as *Ehrenfeld v. Mahfouz,*[167] in which parties against whom foreign libel judgments have been obtained seek to prevent U.S. recognition and enforce-

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162. While the jurisdictional rules of the Convention apply only to exclusive choice of court agreements, Article 22 allows reciprocal declarations by Contracting States that would establish a regime for the recognition and enforcement of judgments resulting from jurisdiction through non-exclusive choice of court agreements as well.

163. Foreign Judgments Recognition and Enforcement Act 3 (Proposed Federal Statute 2005).

164. *Id.* at 6.

165. Pub. L. No. 111-223, 111th Congress, 124 Stat. 2480 (codified at 28 U.S.C. §§ 4101–4105).

166. N.Y. C.P.L.R. § 302(d) (McKinney 2009).

167. 518 F.3d 102 (2008) (with earlier certification to the New York Court of Appeals, Ehrenfeld v. Mahfouz, 9 N.Y.3d 501, 851 N.Y.S.2d 381, 881 N.E.2d 830 (2007)).

ment of those judgments. Both Acts prevent recognition and enforcement of such judgments and allow preemptive declaratory judgments against recognition.[168]

168. Title 28 U.S.C. § 4102(a)(1) provides that "a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that (A) the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located . . . ."

Title 28 U.S.C. § 4104(a)(1) provides that "[a]ny United States person against whom a foreign judgment is entered on the basis of the content of any writing, utterance, or other speech by that person that has been published, may bring an action in district court, under section 2201(a) for a declaration that the foreign judgment is repugnant to the Constitution or the laws of the United States."

Appendix A
Managing the Case—Common Questions and Issues Addressed in This Guide

The following questions present the issues addressed in this guide in a format reflecting the path of a typical foreign judgment case. Each question is followed by a reference to the relevant guide section.

1. Is subject matter jurisdiction based on diversity or federal question?
    a. If diversity, what is the law of the state in which the court is located? *Part II.B. & Part II.E.*
    b. If federal question, what federal common law applies? *Part II.C.*
2. Is the judgment final, conclusive, and enforceable in the state or origin? *Part III.A.*
3. Is there in personam or in rem jurisdiction to hear the recognition action? *Part III.B.*
4. If a Uniform Recognition Act applies, does it require reciprocity? *Part III.C.*
5. Is the judgment for taxes, fines, or penalties, such that recognition may be prevented under the revenue rule? *Part III.D.*
6. If the judgment is outside the scope of an applicable Uniform Recognition Act because it is the result of a domestic relations matter, is it still subject to recognition under a statute, treaty, or the common law? *Part III.E.*
7. If the judgment is final, conclusive, and enforceable in the state of origin, and there is personal or in rem jurisdiction for recognition purposes, is there a mandatory basis for non-recognition?
    a. Does the judgment come from a legal system that denies due process generally or does not have an impartial system of justice? *Part IV.A.1.*
        i. What is the threshold below which a judgment may not fall? *Part IV.A.1.a.*
        ii. How does a party prove a denial of systemic due process? *Part IV.A.1.b.*
    b. Did the foreign court have jurisdiction over the defendant according to U.S. concepts of in personam jurisdiction under the Due Process Clause of the United States Constitution? *Part IV.A.2.*

c. Did the foreign court have subject matter jurisdiction to hear the case? *Part IV.A.3.*

8. If the judgment is final, conclusive, and enforceable in the state of origin, and there is personal or in rem jurisdiction for recognition purposes, is there a discretionary basis for non-recognition?
   a. Did the originating court deny notice or an opportunity to be heard? *Part IV.B.1.*
   b. Was there fraud in the original proceedings? *Part IV.B.2.*
   c. Does the judgment, or its recognition, violate a public policy of the United States or of the state in which the court is located? *Part IV.B.3.*
   d. Is there an inconsistent judgment that is also entitled to recognition? *Part IV.B.4.*
   e. Was there a valid choice of court agreement between the parties that called for resolution of the dispute in a court other than the court from which the judgment originates? *Part IV.B.5.*
   f. Was the originating court an inconvenient forum and was jurisdiction based solely on service of process? *Part IV.B.6.*
   g. Was there a failure to provide impartial judicial procedures in the specific case? *Part IV.B.7.*
   h. Was there a failure to provide due process in the specific case? *Part IV.B.8.*
9. Does a default judgment require any special approach to the question of recognition? *Part V.A.*
10. Which party has the burden of proving matters related to the finality of the foreign judgment and the grounds for non-recognition? *Part V.B.*
11. What statute of limitations applies to actions for recognition? *Part V.C.*
12. What is the effect of a judgment if the parties had an agreement to arbitrate? *Part V.D.*
13. What are the potential changes in the law on judgments recognition that may occur in the near future? *Part VI.*

Appendix B
Sources of Applicable Law

State law most often governs the recognition of foreign judgments in U.S. courts. As of July 2009, thirty-one states, the District of Columbia, and the Virgin Islands had adopted either the 1962 Uniform Foreign Money-Judgments Recognition Act (1962 Recognition Act) or the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Recognition Act). The 2005 Recognition Act is substantially similar to the 1962 Recognition Act, but resolves some important issues left unclear in the 1962 Act. Those states that have not adopted either Act generally apply common law principles of comity established by case law and collected in the Restatement (Third) of Foreign Relations Law §§ 481 and 482.

The following is a brief description of existing and potential future sources of the law applicable to both recognition and enforcement of foreign judgments. The chart in Appendix C provides a comparison of the basic rules for recognition (and grounds for non-recognition) of judgments under the Restatement, the 1962 Recognition Act, the 2005 Recognition Act, and the ALI Proposed Federal Statute. Appendix D contains a chart showing state-by-state enactment of the two Recognition Acts and the Enforcement Act as of August 2011.

Existing Sources of Law on the Recognition and Enforcement of Judgments

The Restatement (Third) of Foreign Relations Law §§ 481 and 482. For those states that have not enacted an applicable statute, the recognition of foreign judgments remains a matter of common law. The Restatement provides an often-cited summary of the common law on this issue. The level of uniformity of practice may account, in part, for the fact that many states have not found it necessary to enact a statute to govern recognition of foreign judgments. As of July 2009, nineteen states retained a common law approach to the recognition of foreign judgments.

The 1962 Uniform Foreign Money-Judgments Recognition Act. The rules contained in the 1962 Recognition Act largely mirror those in the Restatement. While the Act provides the law applicable to recognition of inbound judgments, its drafters sought to make the law clear so that countries that require reciprocity of treatment in order to enforce a judgment from a U.S. court would consider such judgments more favorably. Some states have added a reciprocity requirement to the uniform rules of the Act. As of July 2009, twenty states, plus the District of Columbia and the Virgin Islands, had statutes based on the 1962 Recognition Act.

The 2005 Uniform Foreign-Country Money Judgments Recognition Act. The 2005 Recognition Act is largely a revision of the 1962 Recognition Act. Most major elements remain the same, and the 2005 Act adds rules dealing with burden of proof, procedure, and statutes of limitations. As of July 2009, eleven states had enacted some version of the 2005 Recognition Act.

The Uniform Enforcement of Foreign Judgments Act. Enforcement of a judgment follows recognition when the need exists to collect on specific assets. The Enforcement Act, originally promulgated in 1948, and revised in 1964, is by its terms specifically not applicable to foreign country judgments. Rather, it applies only to sister state and federal judgments that are entitled to full faith and credit under Article IV § 1 of the United States Constitution or the applicable federal statute. Both the 1962 and 2005 Recognition Acts provide, however, that, once a foreign country judgment is recognized, it is enforceable in the same manner and to the same extent as a sister state judgment. Courts in some states that have adopted one of the Recognition Acts have applied the procedures of the Enforcement Act to foreign country judgments as well. As of July 2009, the Enforcement Act was in effect in every state except California, Indiana, and Vermont, as well as in the District of Columbia and the Virgin Islands.

Potential Future Sources of Law on the Recognition and Enforcement of Judgments

2005 ALI Analysis and Proposed Federal Statute. At its annual meeting in 2005, the American Law Institute (ALI) concluded a project titled Recognition and Enforcement of Judgments: Analysis and Proposed Federal Statute. This project was begun with the purpose of developing implementing legislation for a comprehensive jurisdiction and judgments convention originally proposed at the Hague Conference on Private International Law. When that project turned instead to a Convention on Choice of Court Agreements, the ALI project moved forward with a proposed statute that would federalize the law of recognition and enforcement of judgments. ALI's proposed federal statute is not the law in any court in the United States, but ALI's project does provide a useful analysis of existing law and a proposal that would clearly unify the law of judgments recognition in a single federal statute.

2005 Hague Convention on Choice of Court Agreements. On June 30, 2005, the Hague Conference on Private International Law concluded a Convention on Choice of Court Agreements that provides rules for honoring private party agreements to resolve disputes in specific courts and for recognizing and enforcing the judgments resulting from litigation in the chosen court. Mexico acceded to the Convention in 2008, and the United States and the European Community expressed their intent to become parties to the Convention by signing it in early 2009. As of July 2009, the Convention had not come into force for any country.

Uniform Choice of Court Agreement Act. In July 2009, the National Conference of Commissioners on Uniform State Laws (NCCUSL) had a first reading of the Uniform Choice of Court Agreement Act. The Act was intended to provide a state role in the implementation of the 2005 Hague Convention on Choice of Court Agreements, and to keep recognition and enforcement of foreign judgments a matter of state law. Discussions with the Department of State would coordinate the Act with U.S. ratification of the Convention and the relevant federal imple-

menting legislation. It was contemplated that the Act would receive final NCCUSL approval at a second reading in July 2010. As of July 2009, it remained unclear just how federal implementing legislation and state law would be coordinated for purposes of implementing the Hague Convention.

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Appendix C
Comparative Requirements for Recognition and Grounds for Non-Recognition of a Foreign Judgment

Restatement	1962 Recognition Act	2005 Recognition Act	ALI Statute
Foundational Requirements for Recognition			
§ 481: Final judgment granting or denying money, declaring personal status, or determining property interests	**§§ 1(2) & 2:** Judgment "granting or denying a sum of money" and "final and conclusive and enforceable where rendered"	**§§ 3(a) & 4(a):** "Grants or denies recovery of a sum of money" and "is final, conclusive, and enforceable" where rendered	**§ 1(b):** Final judgment "granting or denying a sum of money, or determining a legal controversy"
Mandatory Grounds for Non-Recognition			
§ 482(1): (a) Judicial system does not provide impartial tribunals and due process (b) Lack of personal jurisdiction, applying U.S. standards	**§ 4(a):** (1) Judicial system does not provide impartial tribunals and due process (2) Lack of personal jurisdiction, applying U.S. standards (3) Lack of subject matter jurisdiction	**§ 4(b):** (1) Judicial system does not provide impartial tribunals and due process (2) Lack of personal jurisdiction, applying U.S. standards (3) Lack of subject matter jurisdiction	**§ 5(a):** (i) System does not provide impartial tribunals/ procedures compatible with fundamental fairness (ii) Judgment raises doubt about integrity of the rendering court (iii) Unacceptable ground of personal jurisdiction (iv) Notice not reasonably calculated to inform defendant (v) Proceedings contrary to an agreement of the parties (vi) Judgment obtained by fraud, depriving defendant of adequate opportunity to present case (vii) Judgment or claim repugnant to public policy of the U.S. or a particular state

Discretionary Grounds for Non-Recognition			
	§ 4(b): (1) Insufficient notice to defendant (2) Fraud (3) Cause of action contrary to public policy "of this state" (4) Judgment conflicts with another judgment (5) Proceedings contrary to party agreement on forum (6) Seriously inconvenient forum with jurisdiction based only on personal service	**§ 4(c):** (1) Insufficient notice to defendant (2) Fraud (3) Judgment or cause of action contrary to public policy "of this state or of the United States" (4) Judgment conflicts with another judgment (5) Proceedings contrary to party agreement on forum (6) Seriously inconvenient forum with jurisdiction based only on personal service (7) "Substantial doubt about the integrity of the rendering court" (8) "Specific proceeding … not compatible with the requirements of due process of law"	**§ 5(b):** (i) Lack of subject matter jurisdiction (ii) Irreconcilable with another judgment (iii) Earlier proceeding in the U.S. (iv) Action brought to frustrate claim in more appropriate court

Appendix D
State-by-State Enactment of the Uniform Enforcement of Foreign Judgments Act, the Uniform Foreign Money-Judgments Recognition Act (1962), and the Uniform Foreign-Country Money Judgments Recognition Act (2005) (Current to April 2012)[1]

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Alabama	Ala. Code §§ 6-9-230 to 6-9-238 (West, Westlaw through Act 2012-78 of the 2012 Regular Session).	None	Proposed 2012 HB378 Regular Session (Ala. 2012).
Alaska	Alaska Stat. §§ 09.30.200 to 09.30.270 (West, Westlaw through the 2012 2d Regular Session of the Twenty-Seventh State Legislature).	Alaska Stat. §§ 09.30.100 to 09.30.180 (West, Westlaw through the 2012 2d Regular Session of the Twenty-Seventh State Legislature).	None
Arizona	Ariz. Rev. Stat. Ann. §§ 12-1701 to 12-1708 (West, Westlaw through the Second Regular Session of the Fiftieth Legislature (2012)).	None	None
Arkansas	Ark. Code. Ann. §§ 16-66-601 to 16-66-608 (West, Westlaw through 2011 Regular Session).	None	None
California	None[2]	Repealed 2007.	Cal. Civ. Proc. Code §§ 1713 to 1724 (West, Westlaw through ch. 8 of 2012 Regular Session Laws).

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Colorado	Colo. Rev. Stat. Ann. §§ 13-53-101 to 13-53-108 (West, Westlaw through laws effective March 22, 2012).	Repealed 2008.	Colo. Rev. Stat. Ann. §§ 13-62-101 to 13-62-112 (West, Westlaw through laws effective March 22, 2012).
Connecticut	Conn. Gen. Stat. Ann. §§ 52-604 to 52-609 (West, Westlaw through the 2012 Supplement to the Connecticut General Statutes).	Conn. Gen. Stat. Ann. §§ 50a-30 to 50a-38 (West, Westlaw through the 2012 Supplement to the Connecticut General Statutes).	None
Delaware	Del. Code Ann. tit. 10, §§ 4781 to 4787 (West, Westlaw through 78 Laws 2011, chs. 1–203 and technical corrections received from the Delaware Code Revisors for 2011 Acts).	Repealed 2011.	Del. Code Ann. tit. 10, §§ 4801 to 4812 (West, Westlaw through 78 Laws 2011, chs. 1–203 and technical corrections received from the Delaware Code Revisors for 2011 Acts).
District of Columbia	D.C. Code §§ 15-351 to 15-357 (West, Westlaw through January 11, 2012).	Repealed 2011.	2011 District of Columbia Laws 19-86 (Act 19-246) (Westlaw 2012); D.C. Code §§ 15-361 to 15-371 (not yet available on Westlaw).
Florida	Fla. Stat. Ann. §§ 55.501 to 55.509 (West, Westlaw through chapters in effect from the 2012 Second Regular Session of the Twenty-Second Legislature through March 29, 2012).	Fla. Stat. Ann. §§ 55.601 to 55.607 (West, Westlaw through chapters in effect from the 2012 Second Regular Session of the Twenty-Second Legislature through March 29, 2012).	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Georgia	Ga. Code Ann. §§ 9-12-130 to 9-12-138 (West, Westlaw through 2011 Regular and Special Sessions).	Ga. Code Ann. §§ 9-12-110 to 9-12-117 (West, Westlaw through 2011 Regular and Special Sessions).*	None
Hawaii	Haw. Rev. Stat. Ann. §§ 636C-1 to 636C-8 (West, Westlaw through Act 275 [End] of the 2011 Regular Session).	Repealed 2009.	Haw. Rev. Stat. Ann. §§ 658F-1 to 658-F-10 (West, Westlaw current through Act 275 [End] of the 2011 Regular Session).
Idaho	Idaho Code Ann. §§ 10-1301 to 10-1308 (Westlaw through the 2012 Second Regular Session of the 61st Legislature, chs. 1, 2, 9, 10, 13, 14, 17, 33, 38, 40, 42, 47, 52, 55, 57, 59, 61, 71–73, 79, 82–85, 98, 111, 115, effective on or before July 1, 2012).	Updated to UFCMJRA July 1, 2007.	Idaho Code Ann. §§ 10-1401 to 10-1411 (Westlaw through the 2012 Second Regular Session of the 61st Legislature, chs. 1, 2, 9, 10, 13, 14, 17, 33, 38, 40, 42, 47, 52, 55, 57, 59, 61, 71–73, 79, 82–85, 98, 111, 115, effective on or before July 1, 2012).
Illinois	735 Ill. Comp. Stat. Ann. 5/12-650 to 5/12-657 (Smith-Hurd, Westlaw through P.A. 97-679 of the 2011 Regular Session).	735 Ill. Comp. Stat. Ann. 5/12-618 to 5/12-626 (Smith-Hurd, Westlaw through P.A. 97-679 of the 2011 Regular Session). (Repealed effective 2012).	735 Ill. Comp. Stat. Ann. 5/12-661 to 5/12-672 (Smith-Hurd, Westlaw through P.A. 97-679 of the 2011 Regular Session).
Indiana	None	None	Ind. Code § 34-11-2-13 and Ind. Code §§ 34-54-12-1 to 34-54-12-9 (Westlaw through 2011 1st Regular Session).

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Iowa	Iowa Code Ann. §§ 626A.1 to 626A.8 (West, Westlaw current with immediately effective legislation signed as of 3/28/2012 from the 2012 Regular Session).	Repealed 2010.	Iowa Code Ann. §§ 626B.101 to 626B.111 (West, Westlaw current with immediately effective legislation signed as of 3/28/2012 from the 2012 Regular Session).
Kansas	Kan. Stat. Ann. §§ 60-3001 to 60-3008 (West, Westlaw through 2011 Regular Session).	None	None
Kentucky	Ky. Rev. Stat. Ann. §§ 426.950 to 426.975 (West, Westlaw through end of 2011 legislation).	None	None
Louisiana	La. Rev. Stat. Ann. §§ 13:4241 to 13:4248 (West, Westlaw through 2011 First Extraordinary and Regular Sessions).	None	None[3]
Maine	Me. Rev. Stat. Ann. tit. 14, §§ 8001 to 8008 (West, Westlaw through emergency legislation through chapter 540 of the 2011 Second Regular Session of the 125th Legislature).	Me. Rev. Stat. Ann. tit. 14, §§ 8501 to 8509 (West, Westlaw through emergency legislation through chapter 540 of the 2011 Second Regular Session of the 125th Legislature).*	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Maryland	Md. Code. Ann., Cts. & Jud. Proc. §§ 11-801 to 11-807 (West, Westlaw through chapters 1 and 2 of the 2012 Regular Session of the General Assembly).	Md. Code. Ann., Cts. & Jud. Proc. §§ 10-701 to 10-709 (West, Westlaw through chapters 1 and 2 of the 2012 Regular Session of the General Assembly).	None
Massachusetts	Proposed Legislation: H.B. 1277 187th Gen. Ct., Reg. Sess. (Mass. 2011).	Mass. Gen. Laws Ann. ch. 235, § 23A (West, Westlaw through chapter 42 of the 2012 2d Annual Session).*	Proposed Legislation: H.B. 29 187th Gen. Ct., Reg. Sess. (Mass. 2011).
Michigan	Mich. Comp. Laws Ann. §§ 691.1171 to 691.1179 (West, Westlaw through P.A. 2012, No. 70, of the 2012 Regular Session, 96th Legislature).	Repealed 2008.	Mich. Comp. Laws Ann. §§ 691.1131 to 691.1143 (West, Westlaw through P.A. 2012, No. 70, of the 2012 Regular Session, 96th Legislature).
Minnesota	Minn. Stat. Ann. §§ 548.26 to 548.33 (West, Westlaw current with laws of the 2012 Regular Session through chapter 131).	Repealed 2010.	Minn. Stat. Ann. §§ 548.26 to 548.33 (West, Westlaw current with laws of the 2012 Regular Session through chapter 131).
Mississippi	Miss. Code. Ann. §§ 11-7-301 to 11-7-309 (West, Westlaw through the end of 2011 Regular Session).	None	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Missouri	Mo. Ann. Stat. § 511.760 (Vernon, Westlaw through the end of the 2011 First Extraordinary Session of the 96th General Assembly).	Mo. Ann. Stat. §§ 511.770 to 511.787 (Vernon, Westlaw through the end of the 2011 First Extraordinary Session of the 96th General Assembly).	None
Montana	Mont. Code Ann. §§ 25-9-501 to 25-9-508 (West, Westlaw through all 2011 laws, Code Commissioner changes, and 2010 ballot measures).	Repealed and amended 2009.	Mont. Code Ann. §§ 25-9-601 to 25-9-612 (West, Westlaw through all 2011 laws, Code Commissioner changes, and 2010 ballot measures).
Nebraska	Neb. Rev. Stat. §§ 25-1587.01 to 25-1587.09 (West, Westlaw through the 102d Legislature First Special Session (2011)).	None	None
Nevada	Nev. Rev. Stat. Ann. §§ 17.330 to 17.400 (West, Westlaw through the 2011 76th Regular Session of the Nevada Legislature and technical corrections received from the Legislative Counsel Bureau (2011)).	None	Nev. Rev. Stat. Ann. §§ 17.700 to 17.820 (West, Westlaw through the 2011 76th Regular Session of the Nevada Legislature and technical corrections received from the Legislative Counsel Bureau (2011)).

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
New Hampshire	N.H. Rev. Stat. Ann. §§ 524-A:1 to 524-A:8 (West, Westlaw through chapter 272 (End) of the 2011 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services).	None	None
New Jersey[4]	N.J. Stat. Ann. §§ 2A:49A-25 to 2A:49A-33 (West, Westlaw with laws effective through L.2012, c. 1).	N.J. Stat. Ann. §§ 2A:49A-16 to 2A:49A-24 (West, Westlaw with laws effective through L.2012, c. 1).	None
New Mexico	N.M. Stat. Ann. §§ 39-4A-1 to 39-4A-6 (West, Westlaw through all 2011 legislation).	Repealed 2009.	N.M. Stat. Ann. §§ 39-4D-1 to 39-4D-11 (West, Westlaw through all 2011 legislation).
New York	N.Y. Civ. Prac. L. & R. §§ 5401 to 5408 (McKinney, Westlaw through L.2011, chapters 1 to 604).	N.Y. Civ. Prac. L. & R. §§ 5301 to 5309 (McKinney, Westlaw through L.2011, chapters 1 to 604).	None
North Carolina	N.C. Gen. Stat. Ann. §§ 1C-1701 to 1C-1708 (West, Westlaw through S.L. 2012-1 of the 2012 Regular Session of the General Assembly).	Repealed 2009.	N.C. Gen. Stat. Ann. §§ 1C-1850 to 1C-1859 (West, Westlaw through S.L. 2012-1 of the 2012 Regular Session of the General Assembly).
North Dakota	N.D. Cent. Code §§ 28-20.1-01 to 28-20.1-08 (West, Westlaw through the 2011 Regular and Special Session).	N.D. Cent. Code §§ 28-20.2-01 to 28-20.2-06 (West, Westlaw through the 2011 Regular and Special Session).	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Ohio	Ohio Rev. Code Ann. §§ 2329.021 to 2329.027 (Baldwin, Westlaw through all 2011 laws and statewide issues and 2012 File 80 of the 129th GA (2011–2012)).	Ohio Rev. Code Ann. §§ 2329.90 to 2329.94 (Baldwin, Westlaw through all 2011 laws and statewide issues and 2012 File 80 of the 129th GA (2011–2012)).*	None
Oklahoma	Okla. Stat. Ann. tit. 12, §§ 719 to 726 (West, Westlaw with emergency effective provisions through chapter 3 of the Second Regular Session of the 53d Legislature (2012)).	Repealed 2009.	Okla. Stat. Ann. tit. 12, §§ 718.1 to 718.12 (West, Westlaw with emergency effective provisions through chapter 3 of the Second Regular Session of the 53d Legislature (2012)).
Oregon	Or. Rev. Stat. §§ 24.105 to 24.175 (West, Westlaw with emergency legislation through ch. 35 of the 2012 Reg. Sess. Revisions to Acts prior to 2012 made by the Oregon Reviser are in the process of being incorporated. Revisions to 2012 Acts made by the Oregon Reviser were unavailable at the time of publication).	Repealed 2009.	Or. Rev. Stat. §§ 24.350 to 24.400 (West, Westlaw with emergency legislation through ch. 35 of the 2012 Reg. Sess. Revisions to Acts prior to 2012 made by the Oregon Reviser are in the process of being incorporated. Revisions to 2012 Acts made by the Oregon Reviser were unavailable at the time of publication).
Pennsylvania	42 Pa. Cons. Stat. Ann. § 4306 (West, Westlaw through the end of the 2011 Regular Session).	42 Pa. Cons. Stat. Ann. §§ 22001 to 22009 (West, Westlaw through the end of the 2011 Regular Session).	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Rhode Island	R.I. Gen. Laws §§ 9-32-1 to 9-32-8 (West, Westlaw with amendments through chapter 409 of the 2011 Regular Session. For research tips related to newly added material, see Scope).	None	Proposed Legislation: S.B. 674 (R.I. 2011).
South Carolina	S.C. Code Ann. §§ 15-35-900 to 15-35-960 (West, Westlaw through end of 2011 Regular Session).	None	None
South Dakota	S.D. Codified Laws §§ 15-16A-1 to 15-16A-10 (West, Westlaw through the 2011 Special Session, Executive Order 11-1, and Supreme Court Rule 11-17).	None	None
Tennessee	Tenn. Code Ann. §§ 26-6-101 to 26-6-107 (West, Westlaw through laws from the 2012 Second Regular Session, eff. through Feb. 9, 2012).	None	None
Texas	Tex. Civ. Prac. & Rem. Code Ann. §§ 35.001 to 35.008 (Vernon, Westlaw through the end of the 2011 Regular Session and First Called Session of the 82d Legislature).	Tex. Civ. Prac. & Rem. Code Ann. §§ 36.001 to 36.008 (Vernon, Westlaw through the end of the 2011 Regular Session and First Called Session of the 82d Legislature).*	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Utah	Utah Code Ann. §§ 78B-5-301 to 78B-5-307 (West, Westlaw through 2011 Third Special Session).	None	None
Vermont	None	None	None
Virginia	Va. Code Ann. §§ 8.01-465.1 to 8.01-465.5 (West, Westlaw through End of the 2011 Reg. Sess. and 2011 Sp. S. I. and includes 2012 Reg. Sess. cc. 1 to 3, 85, 166, 190, 210, 231, 239, 289, 306, 314, and 315).	Va. Code Ann. §§ 8.01-465.6 to 8.01-465.13 (West, Westlaw through End of the 2011 Reg. Sess. and 2011 Sp. S. I. and includes 2012 Reg. Sess. cc. 1 to 3, 85, 166, 190, 210, 231, 239, 289, 306, 314, and 315).	None
Washington	Wash. Rev. Code Ann. §§ 6.36.010 to 6.36.910 (West, Westlaw through all Legislation from the 2011 2d Special Session and 2012 Legislation effective through March 26, 2012).	Repealed 2009.	Wash. Rev. Code Ann. §§ 6.40A.010 to 6.40A.902 (West, Westlaw through all Legislation from the 2011 2d Special Session and 2012 Legislation effective through March 26, 2012).
West Virginia	W. Va. Code Ann. §§ 55-14-1 to 55-14-8 (West, Westlaw through 2012 Regular Session effective through February 16, 2012).	None	None

State	Uniform Enforcement of Foreign Judgments Act	Uniform Foreign Money-Judgments Recognition Act (1962)	Uniform Foreign-Country Money Judgments Recognition Act (2005)
Wisconsin	Wis. Stat. Ann. § 806.24 (West, Westlaw through 2011 Act 117, Act 119, Acts 121 to 124, and Acts 126 to 127, published 04/02/2012).	None	None
Wyoming	Wyo. Stat. Ann. §§ 1-17-701 to 1-17-707 (West, Westlaw through the 2011 General Session).	None	None
Puerto Rico	None	None	None
U.S. Virgin Islands	V.I. Code Ann. tit. 5, §§ 551 to 558 (West, Westlaw through Act 7278 of the 2011 Regular Session. Excludes Act 7264. Annotations current through October 17, 2011).	V.I. Code Ann. tit. 5, §§ 561 to 569 (West, Westlaw through Act 7278 of the 2011 Regular Session. Excludes Act 7264. Annotations current through October 17, 2011).	None
Number of jurisdictions enacting each statute	48	16	18
Number of jurisdictions proposing legislation	1	0	2

1. An asterisk (*) denotes those states which have added a reciprocity requirement in their enactment of the Uniform Foreign Money-Judgments Recognition Act or the Uniform Foreign-Country Money Judgments Recognition Act.

The following state statutes include requirements of reciprocity in the enactment of the 1962 Uniform Foreign-Money Judgments Recognition Act: Fla. Stat. Ann. § 55.605 (West, Westlaw through chapters in effect from the 2012 Second Regular Session of the Twenty-Second Legislature through March 29, 2012); Ga. Code Ann. § 9-12-114(10) (West, Westlaw through

2011 Regular and Special Sessions); Me. Rev. Stat. Ann. tit. 14, § 8505 (West, Westlaw through emergency legislation through chapter 540 of the 2011 Second Regular Session of the 125th Legislature); Mass. Gen. Laws Ann. ch. 235, § 23A (West, Westlaw through chapter 42 of the 2012 2d Annual Session); Ohio Rev. Code Ann. § 2329.92 (Baldwin, Westlaw through all 2011 laws and statewide issues and 2012 File 80 of the 129th GA (2011–2012)); Tex. Civ. Prac. & Rem. Code Ann. § 36.005(b)(7) (Vernon, Westlaw through the end of the 2011 Regular Session and First Called Session of the 82d Legislature). No state to date has included a reciprocity requirement in its adoption of the 2005 Uniform Foreign-Country Money Judgments Recognition Act.

N.H. Rev. Stat. Code Ann. § 524:11 (West, Westlaw through chapter 272 (End) of the 2011 Reg. Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services) requires reciprocity to be shown for the enforcement of a Canadian, federal, or provincial judgment.

2. California has adopted its own act to deal with sister state judgments. Cal. Civ. Proc. Code §§ 1710.10 to 1710.65 (West, Westlaw through ch. 8 of 2012 Reg. Sess.).

3. La. Code Civ. Proc. Ann. art. 2541 (West, Westlaw through the 2011 First Extraordinary and Regular Sessions) and La. Rev. Stat. Ann. § 13:4243 (West, Westlaw through 2011 First Extraordinary Session) deal with foreign country judgments. Louisiana has not enacted the Uniform Foreign Money-Judgments Recognition Act or the Uniform Foreign-Country Money Judgments Recognition Act.

4. The New Jersey Legislature has proposed a bill (S.B. 368—introduced Jan. 12, 2010) that would permit New Jersey courts to not enforce defamation judgments from foreign countries under certain circumstances.