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# Enforcing Foreign Judgments In The U.S. - A Practitioner's Perspective

*Presented by:*

Devindra R. T. Kissoon  
[dkissoon@cozen.com](mailto:dkissoon@cozen.com)

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# Objective: Judgment Enforcement



- Threshold issue: Can a foreign money judgment be enforced in the United States?
  - Yes



- **Practice Pointer:**
  - The judgment enforcement process begins at the commencement of an action.
  - **GET HELP!!!!** Consult with resident counsel prior to commencement of local proceedings to avoid common pitfalls.

# Legal Framework In The United States



- The U.S. is not party to any international conventions or treaties requiring the recognition of foreign judgments.
- No constitutional basis requiring recognition.
- There is no governing federal legislation.
- The U.S. is receptive to foreign judgment recognition and enforcement.

# The Beginning: *Hilton v. Guyot* 159 U.S. 113 (1895)



- The U.S. Supreme Court drew upon the principle of comity to fashion a general rule that foreign judgments should be enforced in U.S. courts absent a specific reason for non-enforcement.

## Overriding Principles: Hilton In Practice



- Whether The Foreign Court Properly Accepted Personal Jurisdiction Over The Defendant.
- Whether The Defendant was Properly Served With Notice Of The Proceeding And Given A Reasonable Opportunity To Be Heard. See *Koster v. Automark Industries, Inc.*, 640 F.2d 77 (7th Cir. 1981); *Mata v. American Life Insurance Co.*, 771 F. Supp. 1375 (D. Del. 1991).



# Overriding Principles Continued



- Whether the proceedings were tainted with fraud.
- Whether the judgment offends the public policy of the local state.

# Governing Law



- State Law Applies:
  - a party seeking to enforce judgment in the U.S. must file suit in a local court.
  - enforcement under state law.
  - that court will determine whether to give effect to the judgment.
- Federal courts will apply state law in diversity cases.





- **Practice Pointer**
  - Obtain an exemplified (authenticated or certified) copy of the foreign judgment with the seal of the issuing court affixed thereto

# Uniform Foreign-Money Judgments Recognition Act (“UFMJRA”)



- Not all states have implemented the UFMJRA.
- In New York, Article 53 of the New York Civil Practice Law and Rules governs foreign judgment enforcement.
- UFMJRA modeled from the common law requirements followed in *Hilton v. Guyot* provides uniform framework for enforcement of foreign judgments.

## UFMJRA continued



- Applies to money judgments only – excludes judgments for taxes, fines or other penalties, or for support in matrimonial or family matters.
- Does not apply to preliminary relief or interim orders – only to judgments that are “final and conclusive and enforceable where rendered.”
- A judgment may be treated as final “even though an appeal therefrom is pending or it is subject to appeal.” *Id.* § 1 UFMJRA.



# Grounds For Non-Recognition Under The UFMJRA



- **Mandatory Grounds For Non Recognition:**
  - the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process law;
  - the foreign court did not have personal jurisdiction over the defendant; *or*
  - the foreign court did not have personal jurisdiction over the subject matter.

# Discretionary Grounds For Non-Recognition



- A judgment “need not be recognized” where:
  - The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
  - The judgment was obtained by fraud;
  - The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state;
  - The judgment conflicts with another final and conclusive judgment;
  - The parties had agreed to another form of settlement of the dispute, e.g., arbitration; *or*
  - In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.



## UFMJRA: Personal Jurisdiction



- A foreign judgment “shall not be refused recognition for lack of personal jurisdiction if:
  - Defendant was personally served in the foreign state.
  - Defendant appeared voluntarily in the foreign proceedings and consented to jurisdiction.
  - Defendant agreed to submit to jurisdiction of foreign court before the action was commenced.

## UFMJRA: Personal Jurisdiction continued



- Defendant was incorporated or domiciled in the foreign state when the action was commenced.
- Defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising from that business location.
- Additionally, the courts of the enforcing state are free to recognize other bases of jurisdiction

## UFMJRA Revisions



- The UFMJRA was revised and updated in 2005 to clarify provisions and correct problems created by the interpretation of provisions by courts over the years.
  - See <http://www.law.upenn.edu/bll/archives/ulc/ufmjra/2005final.htm/>.



## Procedure



- If all the prerequisites for enforcement are met, the non-U.S. court judgment will be converted to a state court judgment. Generally this is done either by commencing a new action in the state court or by a form of summary proceeding. See, e.g., N.Y. CPLR 3213 (motion for summary judgment in lieu of complaint). Only after the non-U.S. court judgment is domesticated and converted to a state court judgment does it become enforceable as a judgment.



## Practical Considerations Pertinent To The Enforcement of Judgments In All Jurisdictions



- Proper notice;
- Subject matter and personal jurisdiction;
- Final and binding judgment; *and*
- No violation of “recognizing” country’s public policy.

# Common Practitioner Pitfalls



- **Non-compliance with local service requirements.**
  - Practice Pointer: consult with local counsel and check applicable conventions e.g. Hague Convention
- **Jurisdiction not properly obtained.**
  - Practice Pointer: ensure jurisdiction properly obtained pursuant to local and foreign law.
- **Foreign judgment may be unenforceable absent treaty.**
- **Public policy concerns.**
- **Reciprocity.**

# Overriding Principle



- DO NOT OFFEND LOCAL LAWS



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*For more information, please contact:*

Dave Kissoon

[dkissoon@cozen.com](mailto:dkissoon@cozen.com)

45 Broadway Atrium, Suite 1600  
New York, NY 10006-3792

Tel: (212) 453-3829

Fax: (866) 755-6386

