UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

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ON UNIFORM STATE LAWS

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PREFATORY NOTE

This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962. That Act codified the most prevalent common law rules with regard to the recognition of money judgments rendered in other countries. The hope was that codification by a state of its rules on the recognition of foreign-country money judgments, by satisfying reciprocity concerns of foreign courts, would make it more likely that money judgments rendered in that state would be recognized in other countries. Towards this end, the Act sets out the circumstances in which the courts in states that have adopted the Act must recognize foreign-country money judgments. It delineates a minimum of foreign-country judgments that must be recognized by the courts of adopting states, leaving those courts free to recognize other foreign-country judgments not covered by the Act under principles of comity or otherwise. Since its promulgation over forty years ago, the 1962 Act has been adopted in a majority of the states and has been in large part successful in carrying out it purpose of establishing uniform and clear standards under which state courts will enforce the foreign-country money judgments that come within its scope.

This Act continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing application of the Act; (3) the need to set out the procedure by which recognition of a foreign-country money judgment under the Act must be sought; (4) the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law; (5) the need to expressly allocate the burden of proof with regard to the grounds for denying recognition; and (6) the need to establish a statute of limitations for recognition actions.

In the course of drafting this Act, the drafters revisited the decision made in the 1962 Act not to require reciprocity as a condition to recognition of the foreign-country money judgments covered by the Act. After much discussion, the drafters decided that the approach of the 1962 Act continues to be the wisest course with regard to this issue. While recognition of U.S. judgments continues to be problematic in a number of foreign countries, there was insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act. At the same time, the certainty and uniformity provided by the approach of the 1962 Act, and continued in this Act, creates a stability in this area that facilitates international commercial transactions.

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SECTION 1. SHORT TITLE. This [act] may be cited as the [Uniform Foreign-Country Money Judgments Recognition Act].

Comment

Source: This section is an updated version of Section 9 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Foreign country" means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country.

Comment

Source: This section is derived from Section 1 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

1. The defined terms "foreign state" and "foreign judgment" in the 1962 Act have been changed to "foreign country" and "foreign-country judgment" in order to make it clear that the Act does not apply to recognition of sister-state judgments. Some courts have noted that the "foreign state" and "foreign judgment" definitions of the 1962 Act have caused confusion as to whether the Act should apply to sister-state judgments because "foreign state" and "foreign judgment" are terms of art generally used in connection with recognition and enforcement of

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sister-state judgments. *See, e.g.,* Eagle Leasing v. Amandus, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court's application of UFMJRA to a sister-state judgment, but noting lower court's confusion was understandable as "foreign judgment" is term of art normally applied to sister-state judgments). *See also,* Uniform Enforcement of Foreign Judgments Act §1 (defining "foreign judgment" as the judgment of a sister state or federal court).

The 1962 Act defines a "foreign state" as "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands." Rather than simply updating the list in the 1962 Act's definition of "foreign state," the new definition of "foreign country" in this Act combines the "listing" approach of the 1962 Act's "foreign state" definition with a provision that defines "foreign country" in terms of whether the judgments of the particular government's courts are initially subject to the Full Faith and Credit Clause standards for determining whether those judgments will be recognized. Under this new definition, a governmental unit is a "foreign country" if it is (1) not the United States or a state, district, commonwealth, territory or insular possession of the United States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

The Full Faith and Credit Clause, Art. IV, section 1, provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." Whether the judgments of a governmental unit are subject to the Full Faith and Credit Clause may be determined by judicial interpretation of the Full Faith and Credit Clause or by statute, or by a combination of these two sources. For example, pursuant to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress has passed 28 U.S.C.A. §1738, which provides *inter alia* that court records from "any State, Territory, or Possession of the United States" are entitled to full faith and credit under the Full Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the United States Supreme Court held that this statute also requires that full faith and credit be given to judgments of federal courts. States also have made determinations as to whether certain types of judgments are subject to the Full Faith and Credit Clause. *E.g.* Day v. Montana Dept. Of Social & Rehab. Servs., 900 P.2d 296 (Mont. 1995) (tribal court judgment not subject to Full Faith and Credit, and should be treated with same deference shown foreign-country judgments). Under the definition of "foreign country" in this Act, the determination as to whether a governmental unit's judgments are subject to full faith and credit standards should be made by reference to any relevant law, whether statutory or decisional, that is applicable "in this state."

The definition of "foreign country" in terms of those judgments not subject to Full Faith and Credit standards also has the advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a registration procedure for the enforcement of sister state and equivalent judgments, defines a "foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Uniform Enforcement of Foreign

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Judgments Act, §1 (1964). By defining "foreign country" in the Recognition Act in terms of those judgments not subject to full faith and credit standards, this Act makes it clear that the Enforcement Act and the Recognition Act are mutually exclusive – if a foreign money judgment is subject to full faith and credit standards, then the Enforcement Act's registration procedure is available with regard to its enforcement; if the foreign money judgment is not subject to full faith and credit standards, then the foreign money judgment may not be enforced until recognition of it has been obtained in accordance with the provisions of the Recognition Act.

2. The definition of "foreign-country judgment" in this Act differs significantly from the 1962 Act's definition of "foreign judgment." The 1962 Act's definition served in large part as a scope provision for the Act. The part of the definition defining the scope of the Act has been moved to section 3, which is the scope section.

3. The definition of "foreign-country judgment" in this Act refers to "a judgment" of "a court" of the foreign country. The foreign-country judgment need not take a particular form – any order or decree that meets the requirements of this section and comes within the scope of the Act under Section 3 is subject to the Act. Similarly, any competent government tribunal that issues such a "judgment" comes within the term "court" for purposes of this Act. The judgment, however, must be a judgment of an adjudicative body of the foreign country, and not the result of an alternative dispute mechanism chosen by the parties. Thus, foreign arbitral awards and agreements to arbitrate are not covered by this Act. They are governed instead by federal law, Chapter 2 of the U.S. Arbitration Act, 9 U.S.C. §§ 201-208, implementing the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Chapter 3 of the U.S. Arbitration Act, 9 U.S.C. §§301-307, implementing the Inter-American Convention on International Commercial Arbitration. A judgment of a foreign court confirming or setting aside an arbitral award, however, would be covered by this Act.

4. The definition of "foreign-country judgment" does not limit foreign-country judgments to those rendered in litigation between private parties. Judgments in which a governmental entity is a party also are included, and are subject to this Act if they meet the requirements of this section and are within the scope of the Act under Section 3.

SECTION 3. APPLICABILITY.

(a) Except as otherwise provided in subsection (b), this [act] applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final,

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conclusive, and enforceable.

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

(1) a judgment for taxes;

(2) a fine or other penalty; or

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

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this [act] applies to the foreign-country judgment.

Comment

Source: This section is based on Section 2 of the 1962 Act. Subsection (b) contains material that was included as part of the definition of "foreign judgment" in Section 1(2) of the 1962 Act. Subsection (c) is new.

1. Like the 1962 Act, this Act sets out in subsection 3(a) two basic requirements that a foreign-country judgment must meet before it comes within the scope of this Act – the foreign-country judgment must (1) grant or deny recovery of a sum of money and (2) be final, conclusive and enforceable under the law of the foreign country where it was rendered. Subsection 3(b) then sets out three types of foreign-country judgments that are excluded from the coverage of this Act, even though they meet the criteria of subsection 3(a) – judgments for taxes, judgments constituting fines and other penalties, and judgments in domestic relations matters. These exclusions are comparable to those contained in Section 1(2) of the 1962 Act.

2. This Act applies to a foreign-country judgment only to the extent the foreign-country judgment grants or denies recovery of a sum of money. If a foreign-country judgment both grants or denies recovery of a sum money and provides for some other form of relief, this Act would apply to the portion of the judgment that grants or denies monetary relief, but not to the portion that provides for some other form of relief. The U.S. court, however, would be left free to decide to recognize and enforce the non-monetary portion of the judgment under principles of comity or other applicable law. See Section 11.

3. In order to come within the scope of this Act, a foreign-country judgment must be final, conclusive, and enforceable under the law of the foreign country in which it was rendered.

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This requirement contains three distinct, although inter-related concepts. A judgment is final when it is not subject to additional proceedings in the rendering court other than execution. A judgment is conclusive when it is given effect between the parties as a determination of their legal rights and obligations. A judgment is enforceable when the legal procedures of the state to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in collection of the judgment.

While the first two of these requirements – finality and conclusiveness – will apply with regard to every foreign-country money judgment, the requirement of enforceability is only relevant when the judgment is one granting recovery of a sum of money. A judgment denying a sum of money obviously is not subject to enforcement procedures, as there is no monetary award to enforce. This Act, however, covers both judgments granting and those denying recovery of a sum of money. Thus, the fact that a foreign-country judgment denying recovery of a sum of money is not enforceable does not mean that such judgments are not within the scope of the Act. Instead, the requirement that the judgment be enforceable should be read to mean that, if the foreign-country judgment grants recovery of a sum of money, it must be enforceable in the foreign country in order to be within the scope of the Act.

Like the 1962 Act, subsection 3(b) requires that the determinations as to finality, conclusiveness and enforceability be made using the law of the foreign country in which the judgment was rendered. Unless the foreign-country judgment is final, conclusive, and (to the extent it grants recovery of a sum of money) enforceable in the foreign country where it was rendered, it will not be within the scope of this Act.

4. Subsection 3(b) follows the 1962 Act by excluding three categories of foreign-country money judgments from the scope of the Act – judgments for taxes, judgments that constitute fines and penalties, and judgments in domestic relations matters. The domestic relations exclusion has been redrafted to make it clear that all judgments in domestic relations matters are excluded from the Act, not just judgments "for support" as provided in the 1962 Act. This is consistent with interpretation of the 1962 Act by the courts, which extended the "support" exclusion in the 1962 Act beyond its literal wording to exclude other money judgments in connection with domestic matters. *E.g.*, Wolff v. Wolff, 389 A.2d 413 (My. App. 1978) ("support" includes alimony).

Recognition and enforcement of domestic relations judgments traditionally has been treated differently from recognition and enforcement of other judgments. The considerations with regard to those judgments, particularly with regard to jurisdiction and finality, differ from those with regard to other money judgments. Further, national laws with regard to domestic relations vary widely, and recognition and enforcement of such judgments thus is more appropriately handled through comity than through use of this uniform Act. Finally, other statutes, such as the Uniform Interstate Family Support Act and the federal International Child Support Enforcement Act, 42 U.S.C. §659a (1996), address various aspects of the recognition and enforcement of domestic relations awards. Under Section 11 of this Act, courts are free to

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recognize money judgments in domestic relations matters under principles of comity or otherwise, and U.S. courts routinely enforce money judgments in domestic relations matters under comity principles.

Foreign-country judgments for taxes and judgments that constitute fines or penalties traditionally have not been recognized and enforced in U.S. courts. *See, e.g.*, Restatement Third of the Foreign Relations Law of the United States §483 (1986). Both the "revenue rule," under which the courts of one country will not enforce the revenue laws of another country, and the prohibition on enforcement of penal judgments seem to be grounded in the idea that one country does not enforce the public laws of another. *See id.* Reporters' Note 2. The exclusion of tax judgments and judgments constituting fines or penalties from the scope of the Act reflects this tradition. Under Section 11, however, courts remain free to consider whether such judgments should be recognized and enforced under comity or other principles.

A judgment for taxes is a judgment in favor of a foreign country or one of its subdivisions based on a claim for an assessment of a tax. Thus, a judgment awarding a plaintiff restitution of the purchase price paid for an item would not be considered in any part a judgment for taxes, even though one element of the recovery was the sales tax paid by the plaintiff at the time of purchase. Such a judgment would not be one designed to enforce the revenue laws of the foreign country, but rather one designed to compensate the plaintiff. Courts generally hold that the test for whether a judgment is a fine or penalty is determined by whether its purpose is remedial in nature, with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice. *E.g.*, Chase Manhattan Bank, N.A. v. Hoffman, 665 F.Supp 73 (D. Mass. 1987) (finding that Belgium judgment was not penal even though the proceeding forming the basis of the suit was primarily criminal where Belgium court considered damage petition a civil remedy, the judgment did not constitute punishment for an offense against public justice of Belgium, and benefit of the judgment accrued to private judgment creditor, not Belgium). Thus, a judgment that awards compensation or restitution for the benefit of private individuals should not automatically be considered penal in nature and therefore outside the scope of the Act simply because the action is brought on behalf of the private individuals by a government entity. *Cf.* U.S.-Australia Free Trade Agreement, art.14.7.2, U.S.-Austl., May 18, 2004 (providing that when government agency obtains a civil monetary judgment for purpose of providing restitution to consumers, investors, or customers who suffered economic harm due to fraud, judgment generally should not be denied recognition and enforcement on ground that it is penal or revenue in nature, or based on other foreign public law).

5. Under subsection 3(b), a foreign-country money judgment is not within the scope of this Act "to the extent" that it comes within one of the excluded categories. Therefore, if a foreign-country money judgment is only partially within one of the excluded categories, the non-excluded portion will be subject to this Act.

6. Subsection 3(c) is new. The 1962 Act does not expressly allocate the burden of proof with regard to establishing whether a foreign-country judgment is within the scope of the Act.

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Courts applying the 1962 Act generally have held that the burden of proof is on the person seeking recognition to establish that the judgment is final, conclusive and enforceable where rendered. *E.g.*, Mayekawa Mfg. Co. Ltd. v. Sasaki, 888 P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish judgment is final, conclusive, and enforceable where rendered); Bridgeway Corp. v. Citibank, 45 F.Supp.2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a final judgment, conclusive and enforceable where rendered); S.C.Chimexim S.A. v. Velco Enterprises, Ltd., 36 F. Supp.2d 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of establishing conclusive effect). Subsection (3)(c) places the burden of proof to establish whether a foreign-country judgment is within the scope of the Act on the party seeking recognition of the foreign-country judgment with regard to both subsection (a) and subsection (b).

SECTION 4. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) Except as otherwise provided in subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this [act] applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of

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an adequate opportunity to present its case;

(3) the judgment or the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) 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;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(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.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) exists.

Comment

Source: This section is based on Section 4 of the 1962 Act.

1. This Section provides the standards for recognition of a foreign-country money judgment. Section 7 sets out the effect of recognition of a foreign-country money judgment under this Act.

2. Recognition of a judgment means that the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country. *See, e.g.* Restatement (Second) of Conflicts of Laws, Ch. 5, Topic 3, Introductory Note (recognition of foreign judgment occurs to the extent the forum court gives the judgment "the same effect with respect to the parties, the subject matter of the action and the issues involved that it has in the

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state where it was rendered.") Recognition of a foreign-country judgment must be distinguished from enforcement of that judgment. Enforcement of the foreign-country judgment involves the application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign-country judgment. Recognition of a foreign-country money judgment often is associated with enforcement of the judgment, as the judgment creditor usually seeks recognition of the foreign-country judgment primarily for the purpose of invoking the enforcement procedures of the forum state to assist the judgment creditor's collection of the judgment from the judgment debtor. Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment. Recognition, however, also has significance outside the enforcement context because a foreign-country judgment also must be recognized before it can be given preclusive effect under res judicata and collateral estoppel principles. The issue of whether a foreign-country judgment will be recognized is distinct from both the issue of whether the judgment will be enforced, and the issue of the extent to which it will be given preclusive effect.

3. Subsection 4(a) places an affirmative duty on the forum court to recognize a foreign-country money judgment unless one of the grounds for nonrecognition stated in subsection (b) or (c) applies. Subsection (b) states three mandatory grounds for denying recognition to a foreign-country money judgment. If the forum court finds that one of the grounds listed in subsection (b) exists, then it must deny recognition to the foreign-country money judgment. Subsection (c) states eight nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. Subsection (d) places the burden of proof on the party resisting recognition of the foreign-country judgment to establish that one of the grounds for nonrecognition exists.

4. The mandatory grounds for nonrecognition stated in subsection (b) are identical to the mandatory grounds stated in Section 4 of the 1962 Act. The discretionary grounds stated in subsection 4(c)(1) through (6) are based on subsection 4(b)(1) through (6) of the 1962 Act. The discretionary grounds stated in subsection 4(c)(7) and (8) are new.

5. Under subsection (b)(1), the forum court must deny recognition to the foreign-country money judgment if that judgment was "rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law." The standard for this ground for nonrecognition "has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S.113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved." Cmt §4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. Kam-Tech Systems, Ltd. V. Yardeni, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept

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of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under subsection (b)(1), so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding. As the U.S. Supreme Court stated in *Hilton*:

> 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 then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. Under section 4(b)(2), the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) makes clear that other grounds for personal jurisdiction may be found sufficient.

7. Subsection 4(c)(2) limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the foreign-country judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the foreign proceeding. Intrinsic 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.

8. The public policy exception in subsection 4(c)(3) is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether "the [cause of action] [claim for relief] on which the judgment is based" is repugnant to public policy. Based on this "cause

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of action" language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. *E.g.*, Southwest Livestock & Trucking Co., Inc. v. Ramon, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy); Guinness PLC v. Ward, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); The Society of Lloyd's v. Turner, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); *cf.* Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). Subsection 4(c)(3) rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although subsection 4(c)(3) of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in subsection 4(c)(3), which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g.,* Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. Subsection 4(c)(5) allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

10. Subsection 4(c)(6) authorizes the forum court to refuse recognition of a foreign-country judgment that was rendered in the foreign country solely on the basis of personal service

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when the forum court believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens.*

11. Subsection 4(c)(7) is new. Under this subsection, the forum court may deny recognition to a foreign-country judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with subsection 4(b)(1) , which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, subsection 4(b)(1) focuses on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair. *See, e.g.*, The Society of Lloyd's v. Turner, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); CIBC Mellon Trust Co. v. Mora Hotel Corp,. N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); Society of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, subsection 4(c)(7) allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. Subsection 4(c)(8) also is new. It allows the forum court to deny recognition to the foreign-country judgment if the court finds that the specific proceeding in the foreign court was not compatible with the requirements of fundamental fairness. Like subsection 4(c)(7), it can be contrasted with subsection 4(b)(1), which requires the forum court to deny recognition to the foreign-country judgment if the forum court finds that the entire judicial system in the foreign country where the foreign-country judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of subsection 4(b)(1) is on the foreign country's judicial system as a whole, the focus of subsection 4(c)(8) is on the particular proceeding that resulted in the specific foreign-country judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.

Subsections 4(c)(7) and (8) both are discretionary grounds for denying recognition, while subsection 4(b)(1) is mandatory. Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in

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that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the foreign-country judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. Under subsection 4(d), the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition set out in subsection 4(b) or (c) applies. The 1962 Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the 1962 Act took different positions on the issue. *Compare* Bridgeway Corp. v. Citibank, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (plaintiff has burden to show no mandatory basis under 4(a) for nonrecognition exists; defendant has burden regarding discretionary bases) *with* The Courage Co. LLC v. The ChemShare Corp., 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition). Because the grounds for nonrecognition in Section 4 are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment.

SECTION 5. PERSONAL JURISDICTION.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(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

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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;

(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.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection(a) as sufficient to support a foreign-country judgment.

Comment

Source: This provision is based on Section 5 of the 1962 Act. Its substance is the same as that of Section 5 of the 1962 Act, except as noted in Comment 2 below with regard to subsection 5(a)(4).

1. Under section 4(b)(2), the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) makes it clear that these bases of personal jurisdiction are not exclusive. The forum court may find that the foreign court had personal jurisdiction over the defendant on some other basis.

2. Subsection 5(a)(4) of the 1962 Act provides that the foreign court had personal jurisdiction over the defendant if the defendant was "a body corporate" that "had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state." Subsection 5(a)(4) of this Act extends that concept to forms of business organization other

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than corporations.

3. Subsection 5(a)(3) provides that the foreign court has personal jurisdiction over the defendant if the defendant agreed before commencement of the proceeding leading to the foreign-country judgment to submit to the jurisdiction of the foreign court with regard to the subject matter involved. Under this provision, the forum court must find both the existence of a valid agreement to submit to the foreign court's jurisdiction and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

SECTION 6. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Comment

Source: This section is new.

1. Unlike the 1962 Act, which was silent as to the proper procedure for seeking recognition of a foreign-country judgment, Section 6 of this Act expressly sets out the ways in which the issue of recognition may be raised. Under section 6, the issue of recognition always must be raised in a court proceeding. Thus, section 6 rejects decisions under the 1962 Act holding that the registration procedure found in the Uniform Enforcement of Foreign Judgments Act could be utilized with regard to recognition of a foreign-country judgment. *E.g.* Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000). The Enforcement Act deals solely with the *enforcement* of sister-state judgments and other judgments entitled to full faith and credit, not with the *recognition* of foreign-country judgments.

More broadly, section 6 rejects the use of any registration procedure in the context of the foreign-country judgments covered by this Act. A registration procedure represents a balance between the interest of the judgment creditor in obtaining quick and efficient recognition and enforcement of a judgment when the judgment debtor has already been provided with an opportunity to litigate the underlying issues, and the interest of the judgment debtor in being

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provided an adequate opportunity to raise and litigate issues regarding whether the foreign-country judgment should be recognized. In the context of sister-state judgments, this balance favors use of a truncated procedure such as that found in the Enforcement Act. Recognition of sister-state judgments normally is mandated by the Full Faith and Credit Clause. Courts recognize only a very limited number of grounds for denying full faith and credit to a sister-state judgment – that the rendering court lacked jurisdiction, that the judgment was procured by fraud, that the judgment has been satisfied, or that the limitations period has expired. Thus, the judgment debtor with regard to a sister-state judgment normally does not have any grounds for opposing recognition and enforcement of the judgment. The extremely limited grounds for denying full faith and credit to a sister-state judgment reflect the fact such judgments will have been rendered by a court that is subject to the same due process limitations and the same overlap of federal statutory and constitutional law as the forum state's courts, and, to a large extent, the same body of court precedent and socio-economic ideas as those shaping the law of the forum state. Therefore, there is a strong presumption of fairness and competence attached to a sister-state judgment that justifies use of a registration procedure.

The balance between the benefits and costs of a registration procedure is significantly different, however, in the context of recognition and enforcement of foreign-country judgments. Unlike the limited grounds for denying full faith and credit to a sister-state judgment, this Act provides a number of grounds upon which recognition of a foreign-country judgment may be denied. Determination of whether these grounds apply requires the forum court to look behind the foreign-country judgment to evaluate the law and the judicial system under which the foreign- country judgment was rendered. The existence of these grounds for nonrecognition reflects the fact there is less expectation that foreign-country courts will follow procedures comporting with U.S. notions of fundamental fairness and jurisdiction or that those courts will apply laws viewed as substantively tolerable by U.S. standards than there is with regard to sister-state courts. In some situations, there also may be suspicions of corruption or fraud in the foreign-country proceedings. These differences between sister-state judgments and foreign-country judgments provide a justification for requiring judicial involvement in the decision whether to recognize a foreign- country judgment in all cases in which that issue is raised. Although the threshold for establishing that a foreign-country judgment is not entitled to recognition under Section 4 is high, there is a sufficiently greater likelihood that significant recognition issues will be raised so as to require a judicial proceeding.

2. This Section contemplates that the issue of recognition may be raised either as an original matter or in the context of a pending proceeding. Subsection 6(a) provides that in order to raise the issue of recognition of a foreign-country judgment as an initial matter, the party seeking recognition must file an action for recognition of the foreign-country judgment. Subsection 6(b) provides that when the recognition issue is raised in a pending proceeding, it may be raised by counterclaim, cross-claim or affirmative defense, depending on the context in which it is raised. These rules are consistent with the way the issue of recognition most often was raised in most states under the 1962 Act.

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3. An action seeking recognition of a foreign-country judgment under this Section is an action on the foreign-country judgment itself, not an action on the underlying cause of action that gave rise to that judgment. The parties to an action under Section 6 may not relitigate the merits of the underlying dispute that gave rise to the foreign-country judgment.

4. While this Section sets out the ways in which the issue of recognition of a foreign-country judgment may be raised, it is not intended to create any new procedure not currently existing in the state or to otherwise effect existing state procedural requirements. The parties to an action in which recognition of a foreign-country judgment is sought under Section 6 must comply with all state procedural rules with regard to that type of action. Nor does this Act address the question of what constitutes a sufficient basis for jurisdiction to adjudicate with regard to an action under Section 6. Courts have split over the issue of whether the presence of assets of the debtor in a state is a sufficient basis for jurisdiction in light of footnote 36 of the U.S. Supreme Court decision in Shaffer v. Heitner, 433 U.S. 186, 210 n.36 (1977). This Act takes no position on that issue.

5. In states that have adopted the Uniform Foreign-Money Claims Act, that Act will apply to the determination of the amount of a money judgment recognized under this Act.

SECTION 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT. If the court in a proceeding under Section 6 finds that the foreign-country judgment is entitled to recognition under this [act] then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

Comment

Source: The substance of subsection 7(1) is based on Section 3 of the 1962 Act. Subsection 7(2) is new.

1. Section 5 of this Act sets out the standards for the recognition of foreign-country judgments within the scope of this Act, and places an affirmative duty on the forum court to

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recognize any foreign-country judgment that meets those standards. Section 6 of this Act sets out the procedures by which the issue of recognition may be raised. This Section sets out the consequences of the decision by the forum court that the foreign-country judgment is entitled to recognition.

2. Under subsection 7(1), the first consequence of recognition of a foreign-country judgment is that it is treated as conclusive between the parties in the forum state. Section 7(1) does not attempt to establish directly the extent of that conclusiveness. Instead, it provides that the foreign-country judgment is treated as conclusive to the same extent that a judgment of a sister state that had been determined to be entitled to full faith and credit would be conclusive. This means that the foreign-country judgment generally will be given the same effect in the forum state that it has in the foreign country where it was rendered. Subsection 7(1), however, sets out the minimum effect that must be given to the foreign-country judgment once recognized. The forum court remains free to give the foreign-country judgment a greater preclusive effect in the forum state than the judgment would have in the foreign country where it was rendered. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 481 cmt *c* (1986).

3. Under subsection 7(2), the second consequence of recognition of a foreign-country judgment is that, to the extent it grants a sum of money, it is enforceable in the forum state in accordance with the procedures for enforcement in the forum state and to the same extent that a judgment of the forum state would be enforceable. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States §481 (1986) (judgment entitled to recognition is enforceable in accordance with the procedure for enforcement of judgments applicable where enforcement is sought). Thus, under subsection 7(2), once recognized, the foreign-country judgment has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying a judgment of a comparable court in the forum state, and can be enforced or satisfied in the same manner as such a judgment of the forum state.

SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Comment

Source: This section is the same substantively as section 6 of the 1962 Act, except that it adds as an additional measure for the duration of the stay "the time for appeal expires."

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1. Under Section 3 of this Act, a foreign-country judgment is not within the scope of this Act unless it is conclusive and enforceable where rendered. Thus, if the effect of appeal under the law of the foreign country in which the judgment was rendered is to prevent it from being conclusive or enforceable between the parties, the existence of a pending appeal in the foreign country would prevent the application of this Act. Section 8 addresses a different situation. It deals with the situation in which either (1) the party seeking a stay has demonstrated that it intends to file an appeal in the foreign country, although the appeal has not yet been filed or (2) an appeal has been filed in the foreign country, but under the law of the foreign country filing of an appeal does not affect the conclusiveness or enforceability of the judgment. Section 8 allows the forum court in those situations to determine in its discretion that a stay of proceedings is appropriate.

SECTION 9. STATUTE OF LIMITATIONS. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

Comment

Source: This Section is new. The 1962 Act did not contain a statute of limitations. Some courts applying the 1962 Act have used the state's general statute of limitations, *e.g.*, Vrozos v. Sarantopoulos, 552 N.E.2d 1053 (Ill. App. 1990) (as Recognition Act contains no statute of limitations, general five-year statute of limitations applies), while others have used the statute of limitations applicable with regard to enforcement of a domestic judgment, *e.g.*, La Societe Anonyme Goro v. Conveyor Accessories, Inc., 677 N.E. 2d 30 (Ill. App. 1997).

1. Under Section 3 of this Act, this Act only applies to foreign-country judgments that are conclusive, and if the judgment grants recovery of a sum of money, enforceable where rendered. Thus, if the period of effectiveness of the foreign-country judgment has expired in the foreign country where the judgment was rendered, the foreign-country judgment would not be subject to this Act. This means that the period of time during which a foreign-country judgment may be recognized under this Act normally is measured by the period of time during which that judgment is effective (that is, conclusive and, if applicable, enforceable) in the foreign country that rendered the judgment. If, however, the foreign-country judgment remains effective for more than fifteen years after the date on which it became effective in the foreign country, Section 9 places an additional time limit on recognition of a foreign-country judgment. It provides that, if the foreign-country judgment remains effective between the parties for more than fifteen years, then an action to recognize the foreign-country judgment under this Act must be commenced within that fifteen year period.

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2. Section 9 does not address the issue of whether a foreign-country judgment that can no longer be the basis of a recognition action under this Act because of the application of the fifteen-year limitations period in Section 9 may be used for other purposes. For example, a common rule with regard to judgments barred by a statute of limitations is that they still may be used defensively for purposes of offset and for their preclusive effect. The extent to which a foreign-country judgment with regard to which a recognition action is barred by Section 9 may be used for these or other purposes is left to the other law of the forum state.

SECTION 10. UNIFORMITY OF INTERPRETATION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

Source: This Section is substantively the same as Section 8 of the 1962 Act. The section has been rewritten to reflect current NCCUSL practice.

SECTION 11. SAVING CLAUSE. This [act] does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this [act].

Comment

Source: This section is based on Section 7 of the 1962 Act.

1. Section 3 of this Act provides that this Act applies only to certain foreign-country judgments that grant or deny recovery of a sum of money. The purpose of this Act is to establish the minimum standards for recognition of those judgments. Section 11 makes clear that no negative implication should be read from the fact that this Act does not provide for recognition of other foreign-country judgments. Rather, this Act simply does not address the issue of whether foreign-country judgments not within its scope under Section 3 should be recognized. Courts are free to recognize those foreign-country judgments not within the scope of this Act under common law principles of comity or other applicable law.

SECTION 12. EFFECTIVE DATE.

[(a) This [act] takes effect … .

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[(b) This [act] applies to all actions commenced on or after the effective date of this [act] in which the issue of recognition of a foreign-country judgment is raised.]

Comment

Source: Subsection 12(a) is the same as Section 11 of the 1962 Act. Subsection 12(b) is new.

1. Subsection 12(b) provides that this Act will apply to all actions in which the issue of recognition of a foreign-country judgment is raised that are commenced on or after the effective date of this Act. Thus, the application of this Act is measured not from the time the original action leading to the foreign-country judgment was commenced in the foreign country, but rather from the time the action in which the issue of recognition is raised is commenced in the forum court. Subsection 12(b) does not distinguish between whether the purpose of the action commenced in the forum court was to seek recognition as an original matter under Subsection 6(a) or was an action that was already pending when the issue of recognition was raised under Subsection 6(b).

SECTION 13. REPEAL. The following [acts] are repealed:

(a) Uniform Foreign Money-Judgments Recognition Act,

(b)

.]

Comment

Source: This Section is an updated version of Section 10 of the 1962 Act.

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