

Uniform Foreign-Country Money Judgments Recognition Act

Introduction

The National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated in July 2005 proposed legislation entitled the “Uniform Foreign-Country Money Judgments Recognition Act” [Recognition Act]. The Act revises the 1962 “Uniform Foreign Money-Judgments Recognition Act”. Section 1:12A-8(c) of the New Jersey Law Revision Commission’s enabling statute provides that the Commission is to:

“Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions”.

Hence, the examination of the 2005 “Recognition Act” is within the purview of the functions of the Commission in reporting its recommendations to the Legislature. The Commission has reviewed and considered the “Uniform Foreign-Country Money Judgments Recognition Act” and recommends that the Legislature enact the revision, with one New Jersey amendment.

Current New Jersey Law

The State of New Jersey adopted in 1997 the 1962 “Foreign Country Money-Judgements Recognition Act”. N.J.S.A. 2A:49A-15 through 24.¹ Minor amendments in language were inserted by the Assembly Judiciary Committee. However, New Jersey adopted the 1962 act containing its primary principles and structure. No case law is reported under this statute. Consequently, if New Jersey were to adopt the 2005 Act, that adoption would not alter any case law. The adoption would change the language of the existing statute, but not to any detriment as explained below, and would improve the practice in the procedure to obtain recognition of foreign country money judgments by clarifying the law and the procedures to follow to recognize a foreign country money judgments.²

The 2005 Recognition Act

The first question that naturally arises is: why has NCCUSL decided to revise the earlier Act. The Prefatory Note contained in the Official Text explains that the revision is not intended to “depart from the basic rules or approach of the 1962 Act” that have withstood the test of time. The Prefatory Note provides the following rationale for the revision:

¹ The 1962 act is adopted by 28 states, the District of Columbia and the territory of the Virgin Islands.

² It is not known how widely attorneys use the 1962 New Jersey Act. The effect on practice could be minimal.

1. “The need to update and clarify the definitions section”
2. “The need to organize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing the 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 ...”
5. “The need to expressly allocate the burden of proof with regard to the grounds for denying recognition”
6. “The need to establish a statute of limitations”.

The “Recognition Act” deals only with the question of whether a court of an adopting state should recognize the judgment as one entitled to be enforced in that state. It does not deal with enforcement of the judgment or specific enforcement issues. Recognition and enforcement are two conceptually distinct legal concepts. Second, the “Recognition Act” applies directly and exclusively to money judgments or a judgment denying the recovery of money; it does not address the question of whether foreign country judgments based on other grounds should be enforced, except to note that a court may recognize non-money parts of the foreign country money judgment under other principles of law such as applicable statutes or comity.

A point-by-point discussion of the six issues listed in the Prefatory Note provides a good overview of the “Recognition Act” and how it is designed to work. In the definitions section, Section 2, the term “foreign country” is defined unremarkably as a government other than the United States, or a government other than a state, district, commonwealth, territory, or insular possession of the United States. Section 2(1)(A) and (B). The innovation takes place in Section 2(1)(C). Under that section, a foreign country is any government that has issued a judgment that initially is not subject to the Full Faith and Credit Clause. This innovation is positive since it clarifies the applicability of the Act. If the judgment is subject to review under the Full Faith and Credit Clause, then it is not a judgment of a foreign country and the “Recognition Act” does not apply. This modification also coordinates the “Recognition Act” with the Uniform Enforcement of Foreign Judgment Acts that New Jersey has adopted. It also makes clear that sister state judgments do not come within the purview of the Act as they are subject to “full faith and credit”.

The “Recognition Act” applies only to the following judgments that: (1) grant or deny recovery of sums of money and (2) under the law of the foreign country where the judgment was rendered are final, conclusive and enforceable in that foreign country.³ The Comment states verbatim: “A judgement 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

³ Section 8 gives the court the authority to stay the proceedings if a party establishes that an appeal has been taken or will be taken. The stay is effective until the appeal is concluded, the time for appeal has expired, or the appeal was not prosecuted.

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 the collection of the judgment.” The nuanced distinction between “finality” and “conclusiveness” is satisfied when the foreign country judgment is final.

Even if the judgment grants or denies the recovery of money, the “Recognition Act” is inapplicable, if the judgment is: (1) for taxes, (2) fines or penalties, or (3) a judgment of divorce, support or other judgment related to domestic relations. The burden of proof logically rests with the party attempting to seek recognition of the judgment as stated in Section 3(c). An action seeking recognition requires recourse to foreign law experts and evidence to demonstrate to the court that the requirements of the Act are satisfied.

Regarding Points 4 and 5, if the foreign country judgment is within the scope and applicability provisions of the Act, then a court is obliged to recognize that judgment. There are two exceptions: one is mandatory and the other is discretionary. First, a court cannot recognize the judgment if: (1) the judgment was rendered by a tribunal within a judicial system that does not provide impartial tribunals or provide adequate standards of due process, (2) the foreign court lacked personal jurisdiction over the defendant⁴, or (3) the foreign court lacked subject matter jurisdiction. Alternatively, the court has the option not to enforce the judgment for the eight reasons listed in Section 4(c) that individually will not be repeated here. Common threads are that the judgment was obtained under circumstances unfair to the defendant, offensive to due process or obtained by fraud. The party resisting the recognition of the judgment has the burden of proof to establish a non-recognition ground.

Regarding Point 3, the procedure to obtain recognition of a foreign-country money judgment is straightforward and set forth in Section 6. If the recognition is sought as an original matter, it is brought by filing an action for recognition. If recognition is sought in a pending action, then the issue is raised by counter-claim, cross-claim or affirmative defence. When the court finds that the judgment is entitled to recognition, then the effect of that decision is that the judgment is conclusive between the parties to the same extent as would be judgment entitled to Full Faith and Credit. In addition, the judgment is enforceable in the same manner as a judgment rendered in the state.

Regarding Point 6, Section 9 establishes a limitations period as follows using an earlier in time approach. An action must be commenced within the earlier of these times: the judgment is effective in the foreign country or 15 years from the date the judgment became effective in the foreign country.

Single New Jersey Amendment

Section 6 of the “Recognition Act” provides for the procedure for securing recognition of a foreign country money judgment. In the Official Text, it is the legislature that specifies the procedure to follow. In New Jersey, as a consequence of the decision in *Winberry v. Salisbury*, 5 N.J. 240 (1950), the New Jersey Supreme Court has authority to make rules

⁴ Section 5 identifies when the foreign court had jurisdiction over the defendant.

governing the administration, practice and procedures of the New Jersey Courts. To address any problem that Section 6 of the “Recognition Act” poses constitutional questions under *Winberry*, the Commission recommends that Section 6 be amended to include a new subsection (c) stating, “Nothing in this Section precludes the New Jersey Supreme Court from promulgating rules to specify procedures for recognition of foreign-country money judgments”.

Conclusion

The 2005 “Recognition Act” does not contain any provisions that would militate against its adoption. It provides a clear and systematic method of seeking recognition of foreign-country money judgments. To the extent it has clarified issues that have been raised in jurisdictions other than the State of New Jersey, the revision improves the 1962 Act. Therefore, it is recommended that the Legislature adopt the Act.⁵

⁵ No State has adopted the revision and, according to the NCCUSL Web site, there are no 2006 introductions, Legislative Fact sheet retrieved 04 November 2006 from http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ufcmjra.asp.