

# Legal 500

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### United States

## Enforcement of Judgments in Civil and Commercial Matters

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White & Case



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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in United States.

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# United States: Enforcement of Judgments in Civil and Commercial Matters

## 1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

The United States is not currently party to any international conventions or treaties that apply to the recognition or enforcement of foreign judgments in U.S. courts. As discussed below, recognition and enforcement of foreign judgments is governed by the laws of the individual U.S. states and common law.

In March 2022, the United States signed the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters ("Hague Judgments Convention"). However, the United States has not ratified the Hague Judgments Convention (meaning it has not entered into force for the United States), and it remains unclear if ratification will occur in the future.

By contrast, the United States is a party to several international agreements involving the recognition and enforcement of foreign arbitration awards in U.S. courts. Prominent examples include:

- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 ("New York Convention") (implemented under Chapter 2 of the U.S. Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 201-208);
- The Inter-American Convention on International Commercial Arbitration, Jan. 30, 1975, O.A.S.T.S. No. 42 ("Panama Convention") (implemented under Chapter 3 of the FAA, 9 U.S.C. §§ 301-307);
- The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270 ("ICSID Convention"); see 22 U.S.C. § 1650a (codifying Article 54 of the ICSID Convention, which addresses the enforcement of awards, and giving "the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States").

## 2. What, if any, reservations has your jurisdiction made to such treaties?

In signing the Hague Judgments Convention, the United States did not make any reservations to the treaty. Reservations, however, could yet be made if the United States proceeds with ratification of that treaty.

## 3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Yes. There presently is no U.S. federal law or nationwide standards for enforcing foreign judgments. However, courts in all 50 states and the District of Columbia, Puerto Rico, and the U.S. Virgin Islands will recognize and enforce foreign judgments in certain circumstances. With respect to recognition and enforcement of foreign civil monetary judgments, the laws in a majority of states are based on either the 1962 Uniform Foreign Money Judgments Recognition Act (the "1962 Uniform Act") or its 2005 revision, the Uniform Foreign-Country Money Judgments Recognition Act ("2005 Uniform Act"). Federal and state courts will also recognize and enforce foreign judgments more broadly in accordance with common law, *i.e.*, under principles of comity.

**Common Law:** Under the principle of comity, U.S. courts will recognize and enforce a foreign judgment if the party seeking enforcement demonstrates that the judgment comports with traditional notions of due process. This approach stems from the seminal U.S. Supreme Court case *Hilton v. Guyot*, which established that where there was "a full and fair trial abroad before a court of competent jurisdiction" and no showing of prejudice or fraud or any other "special reason why the comity of this nation should not allow it full effect," then the merits of the foreign case will not be questioned. 159 U.S. 113, 202-03 (1895). Accordingly, states that have not adopted a version of the Uniform Act—or to fill gaps where the Act is silent (*e.g.*, for certain non-monetary judgments)—will typically consider the recognition and enforcement of foreign judgments under the comity principles articulated in *Hilton*. See, *e.g.*, *Hennessy v. Wells Fargo Bank*, 400 Wis. 2d 50, 73-76 (S. Ct. Wisc. 2022) (applying *Hilton* in

non-Uniform Act jurisdiction and upholding recognition of foreign money judgment under the principle of comity, noting that under comity, courts will consider whether parties were given adequate notice, whether the foreign court had jurisdiction, and whether the court abided by fundamental standards of fairness).

**1962 and 2005 Uniform Acts:** Seeking to bring uniformity and consistency to the common law on enforcement of foreign civil monetary judgments, the National Conference of Commissioners on Uniform State Laws and the American Bar Association developed the 1962 Uniform Act, which closely followed the common-law principles articulated in *Hilton*. The 2005 Uniform Act sought to update and clarify the 1962 Uniform Act. Though several states continue to follow the common-law approach, even for foreign civil monetary judgments, a majority of states now have adopted versions of the 1962 or 2005 Uniform Acts for such judgments. At the time of writing, adoption of the Uniform Acts in the 50 states, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, is as follows:

- Common Law: 13
- 1962 Uniform Act: 10
- 2005 Uniform Act: 30

A map of the current status of states which have adopted a Uniform Act is [available here](#). In February 2024, a bill to adopt the 2005 Uniform Act was introduced in the Kentucky General Assembly, but this bill remains pending at the time of this publication.

Although the 1962 and 2005 Uniform Acts generally provide for similar mechanisms and guidelines for the enforcement of foreign civil monetary judgments, there are some important differences. For example, the 2005 Uniform Act requires the party seeking recognition of the foreign judgment to show that the judgment is subject to the 2005 Uniform Act while the debtor party generally bears the burden of proof to establish grounds for non-recognition. Meanwhile, the 1962 Uniform Act, by comparison, does not address the burden of proof. See 2005 Uniform Act § 3. In addition, the 2005 Uniform Act establishes a statute of limitations for the enforcement of foreign judgments, while the 1962 Uniform Act does not specify a statute of limitations. See *id.* § 9.

#### 4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

As an initial matter, U.S. courts distinguish between the

recognition and enforcement of a foreign judgment: (1) a foreign judgment must first be recognized and (2) only upon recognition, can a judgment be enforced against specific assets. Though recognition and enforcement typically proceed in sequence, there may be reasons for a party to seek only recognition of a foreign judgment, such as for *res judicata* purposes in an ongoing U.S. proceeding.

The Restatement and the Uniform Acts generally provide that, to be enforceable in a U.S. court, a foreign civil judgment for a sum of money must be: (i) final; (ii) conclusive, and (iii) enforceable in its country of origin. See Restatement (Fourth) of Foreign Relations Law § 481; 1962 Uniform Act § 2; 2005 Uniform Act § 3(a)(2). As noted above, the common-law approach under *Hilton v. Guyot* also assesses whether the foreign proceeding comported with principles of due process and full and fair trials.

In this context, a judgment is “final” when it is not subject to any further proceedings in the *rendering* foreign court other than execution, though it may still be subject to appeals in other courts in the country of origin. See Restatement (Fourth) of Foreign Relations Law § 481 cmt. e. “Conclusive” means the judgment has been given effect as between the parties as to their respective legal rights and obligations. “[E]nforceable” means that all procedures of the rendering jurisdiction to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in collection of the judgment. See Restatement (Fourth) of Foreign Relations Law § 481 cmt. d. Beyond these basic requirements, state law may specify additional criteria. For example, New York requires an authenticated copy of the foreign judgment, and, if the judgment is in a foreign language, an English translation of the judgment with an affidavit by the translator stating his qualifications and that the translation is accurate. See N.Y. C.P.L.R. §§ 2101(b), 5402(a).

The Uniform Acts apply only to foreign civil judgments for a sum of money. However, the Uniform Acts do not expressly prohibit the recognition of other types of civil judgments, and courts sometimes recognize other forms of judgments under the common law as a matter of comity. See 1962 Uniform Act § 7; 2005 Uniform Act § 3; see also, e.g., *Koehler v. Bank of Bermuda Ltd.*, 2004 WL 1555116, at \*3 (S.D.N.Y. July 9, 2004) (holding that a Bermuda declaratory judgment is “entitled to full recognition and effect”).

On the other hand, U.S. courts have long declined to recognize or enforce foreign judgments related to penal laws, taxes, or fines, even under common law. See

Restatement (Fourth) of Foreign Relations Law § 489. In this context, "a penal judgment is one whose 'purpose is to punish an offense against the public justice of the state' rather than 'to afford a private remedy to a person injured by the wrongful act.'" Restatement (Fourth) of Foreign Relations Law § 489 cmt. b (quoting *Huntington v. Attrill*, 146 U.S. 657, 673-74 (1892)). A "tax judgment is a judgment in favor of a foreign state or one of its subdivisions based on a claim for an assessment of a tax, whether imposed in respect of income, property, transfer of wealth, or any other transaction." Restatement (Fourth) of Foreign Relations Law § 489 cmt. c.

### 5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Not Applicable.

### 6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

The procedure for recognition and enforcement varies by state, with some states requiring only that the judgment be filed with the court clerk, and others requiring commencement of a new civil action. Additionally, some states provide for an expedited procedure that is designed to fast-track the recognition and enforcement process. In New York, for example, a foreign judgment may be enforced through a "Motion for Summary Judgment in Lieu of Complaint" proceeding. Under this expedited procedure, a party seeking to enforce a foreign judgment needs to file a summons, a motion for summary judgment and supporting papers. See N.Y. C.P.L.R. §§ 3213; 5303(b). In the absence of a material issue of fact that precludes summary judgment, the New York court will resolve the motion without time-consuming discovery or trial.

As discussed below, any petition or complaint to recognize and enforce a foreign judgment must also demonstrate the existence of subject-matter jurisdiction over the action and personal jurisdiction (either *in personam* or *in rem*).

In addition to starting a new action, a party to an existing U.S. action may raise recognition and enforcement of a foreign judgment as part of a counterclaim, cross-claim, or affirmative defense. See 2005 Uniform Act § 6(b).

### 7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

A judgment creditor seeking to enforce a foreign judgment in the United States may commence proceedings in any state court where subject-matter jurisdiction and personal jurisdiction over the judgment-debtor (either *in personam* or *in rem*) exist, or, if federal subject-matter jurisdiction exists (such as diversity jurisdiction) in an appropriate federal district court with personal jurisdiction over the judgment-creditor. Federal district courts exercising diversity subject-matter jurisdiction over recognition and enforcement proceedings apply the law of the state where the court is located. See *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). This means that U.S. district courts will typically apply state substantive law in recognition and enforcement proceedings.

The party seeking recognition and enforcement may need to fulfill additional procedural requirements which vary by state. At minimum, the party likely will need to submit the following materials:

- A certified English translation of the foreign judgment;
- An affidavit attesting that the judgment is final, conclusive, and enforceable in the country of origin. See, e.g., *Gan Teck Kar Invs. PTE Ltd. v. Thermal Constr. Co. LLC*, 2022 U.S. Dist. LEXIS 79974, at \*11 (N.D. Iowa May 3, 2022) (relying on affidavit of Singaporean lawyer deemed a "foreign law expert" to establish foreign judgment as final, conclusive, and enforceable as a matter of Singaporean law).

### 8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

The length of time required for recognition and enforcement varies widely and is contingent on several jurisdiction and case-specific factors, including:

- The overall complexity and monetary value of the underlying case;
- The reputation of the courts of the country of origin;
- Whether any grounds for non-recognition are raised and the strength of such defenses;
- The existence of pending proceedings in the

- country of origin or a third jurisdiction;
- Whether a party appeals from the lower court decision in the United States;
- Whether the parties submit expert evidence on foreign law; and
- The availability of or necessity for discovery, hearings, and/or trial in the U.S. proceedings.

Broadly speaking, the recognition and enforcement process can take as little as 6-12 months in the most straightforward cases. More complicated cases involving parallel proceedings, extensive briefing and expert submissions, discovery and/or hearings, appeals, etc. can take multiple years before final resolution.

As noted above, some states (e.g., New York) do provide parties the option to utilize expedited procedures that may reduce the overall amount of time required to resolve the case.

### 9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Yes, interim remedies, such as prejudgment attachment, may be available to parties seeking recognition and enforcement of a foreign judgment in certain circumstances. In New York, for example, under C.P.L.R. § 6201(5), a party seeking enforcement of a foreign country “judgment which qualifies for recognition” in New York can obtain prejudgment attachment of the judgment-debtor’s property within New York. However, the movant must also show, “by affidavit and such other written evidence,” that “there is a cause of action, that it is probable that the plaintiff will succeed on the merits,” and that “the amount demanded from the defendant exceeds all counterclaims known to the plaintiff.” N.Y. C.P.L.R. § 6212(a).

Notably, pre-judgment attachment generally is not available if the judgment-debtor is a foreign state or an “agency or instrumentality” of a foreign state (such as a state-owned entity) within the meaning of the Foreign Sovereign Immunities Act in the absence of an explicit waiver. See 28 U.S.C. §§ 1609, 1610(d).

### 10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

Section 9 of the 2005 Uniform Act provides expressly that “[a]n 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.” As noted, the 1962 Uniform Act does not provide a statute of limitations. In practice, limitation periods vary on a state-by-state basis and even Uniform Act jurisdictions may adopt different limitation periods under state law. See, e.g., *Desert Palace, Inc. v. Wiley*, 145 So. 3d 946 (Fla. Dist. Ct. App. 2014) (applying 20-year limitations period to foreign judgment in Florida, a 1962 Uniform Act jurisdiction); *Costaras v. Costaras*, 511 P.3d 568 (Ariz. Ct. App. 2022) (noting general rule of 4-year limitation period for enforcing foreign judgment in Arizona, a 2005 Uniform Act jurisdiction).

### 11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

U.S. courts generally distinguish between discretionary and mandatory grounds for denying the recognition and enforcement of foreign judgments. Though a U.S. court may refuse recognition and enforcement if one or more of the discretionary grounds applies, courts must deny recognition and enforcement if one of the mandatory grounds applies. The Uniform Acts and the Restatement (reflecting common-law practice) generally set forth similar mandatory and discretionary grounds for non-recognition. The burden of showing that one or more of the grounds for non-recognition applies typically lies with the party resisting recognition and enforcement.

#### Mandatory Grounds for Non-Recognition:

- 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;
- The foreign court did not have personal jurisdiction over the defendant;
- The foreign court did not have subject-matter jurisdiction.

#### Discretionary Grounds for Non-Recognition:

- The defendant in the foreign proceeding did not receive notice of the proceedings in sufficient time to allow him/her to defend;
- The judgment was obtained by fraud;
- The cause of action/claim for relief on which the judgment is based violates the public policy of the U.S. jurisdiction where recognition is sought;
- The judgment conflicts with another final and

conclusive judgment;

- The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute was to be settled by different means;
- In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

The 2005 Uniform Act adds two additional discretionary grounds for non-recognition:

- The judgment was rendered in circumstances that raise substantial doubts about the integrity of the rendering court with respect to the judgment;
- The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

In addition, the Restatement (Fourth) of Foreign Relations Law § 484—and a minority of states which have not adopted the Uniform Acts—recognize lack of reciprocity as a discretionary ground for non-recognition. In other words, courts may deny recognition and enforcement of a foreign judgment if the courts of the underlying jurisdiction would not recognize a comparable U.S. judgment.

Here are several examples of U.S. courts refusing to recognize foreign judgments. See, e.g., *Kaupthing ehf. v. Bricklayers and Trowel Trades Int'l Pension Fund Liquidation Portfolio*, 291 F. Supp. 3d 21, 30-31 (D.D.C. 2017) (refusing to enforce foreign judgment because the Icelandic court that issued judgment lacked specific personal jurisdiction over the defendant); *Shell Oil Co. v. Franco*, 2004 WL 5615657, at \*2 (C.D. Ca. Nov. 22, 2004) (noting that “[b]oth the Ninth and Second Circuits have refused to enforce foreign judgments that were rendered under systems that failed to provide impartial tribunals”).

Although less commonly litigated, another possible ground for non-enforcement is that the underlying judgment has been satisfied (the respondent alleges that the judgment has been paid in full) thereby mooting the U.S. enforcement action. See, e.g., *Servipronto De El Salvador, S.A. v. McDonald's Corp.*, 2020 U.S. Dist. LEXIS 60584, at \*22-23 (S.D.N.Y. Apr. 6, 2020) (dismissing an enforcement action as moot because the U.S. court’s “only function is to domesticate” the relevant judgment from El Salvador “so that it can be enforced, but that [j]udgment ha[d] already been paid in El Salvador”).

## 12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

U.S. courts generally avoid revisiting the merits underlying a foreign judgment. This deferential practice is rooted in principles of comity, including the interest in U.S. judgments receiving similar treatment abroad. See *Medellin v. Dretke*, 544 U.S. 660, 670 (2005) (Ginsburg, J., concurring) (“[W]here ‘comity of this nation’ calls for recognition of a judgment rendered abroad, ‘the merits of the case should not . . . be tried afresh . . . upon the mere assertion . . . that the judgment was erroneous in law or in fact.’”) (quoting *Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895)). In practice, U.S. courts sometimes conduct a substantive inquiry into the foreign proceedings and/or underlying judgment to the extent necessary if certain grounds for non-recognition arise. For instance, several of the grounds for non-recognition under the 2005 Uniform Act concern the integrity or due process afforded to the defendant in the underlying proceeding. This inquiry therefore contemplates that the U.S. court examines at least some facets of the foreign court’s procedural and substantive rulings.

## 13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Yes, U.S. courts will enforce foreign judgments only if the foreign court exercised proper personal and subject-matter jurisdiction over the defendant. See *Hilton v. Guyot*, 159 U.S. 113, 173, 202 (1895); 2005 Uniform Act §§ 4(b)(2)-(3); 1962 Uniform Act §§ 4(a)(2)-(3).

U.S. courts assessing whether the foreign court had jurisdiction will look generally to whether the exercise of jurisdiction comports with U.S. standards of due process. See, e.g., *Commissions Import Export, S.A. v. Republic of Congo*, 118 F. Supp. 3d 220, 226-27 (D.D.C. 2015) (recognizing English court had personal jurisdiction over Congo as a matter of English law and comported with the U.S. Foreign Sovereign Immunities Act, 28 U.S.C. § 1330(b)); see also *Falcon Mfg. (Scarborough) Ltd. v. Ames*, 53 Misc.2d 332, 336 (Civ. Ct. N.Y. Co. 1967) (declining to recognize a Canadian judgment because the “requirements of due process [were] lacking”); *Kaupthing ehf. v. Bricklayers and Trowel Trades Int'l Pension Fund Liquidation Portfolio*, 291 F. Supp. 3d 21, 30-31 (D.D.C. 2017) (refusing to enforce an Icelandic judgment because the issuing court lacked specific personal jurisdiction).

**14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?**

As discussed above, U.S. courts will not enforce a foreign judgment if it does not comport with traditional notions of due process. Beyond this threshold requirement, U.S. courts generally do not impose strict requirements on the way in which the defendant was served with the proceedings, so long as the defendant received due notice of the existence of the action (even if the local service procedures were not strictly followed). See Restatement (Fourth) of Foreign Relations Law § 484 cmt. c. U.S. courts may recognize and enforce default judgments rendered by foreign courts, to the extent that the exercise of jurisdiction by that foreign court was not contrary to due process.. Restatement (Fourth) of Foreign Relations Law § 484 cmt. g.

**15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?**

Yes, the Restatement and the Uniform Acts expressly distinguish between mandatory and discretionary grounds for recognition and enforcement. Please refer to our response to Question #11 which describes these grounds.

**16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?**

Yes, U.S. courts recognize and enforce only certain types of foreign judgments. U.S. courts generally will not recognize or enforce foreign judgments concerning the penal laws of another country, or judgments involving tax, fines, or other penalties. See 2005 Uniform Act § 3(b); 1962 Uniform Act § 1(2).

Penal Judgments: The Restatement defines a "penal judgment" as "one whose 'purpose is to punish an offence against the public justice of the State' rather than 'to afford a private remedy to a person injured by the wrongful act.'" Restatement (Fourth) of Foreign Relations Law § 489 cmt. b (quoting *Huntington v. Attrill*, 146 U.S. 657, 673-74 (1892)). This means that foreign judgments for fines, penalties, and forfeitures are typically considered "penal judgments" in this context. By contrast, judgments in favor of a foreign state and arising out of a

civil controversy (e.g., contract or tort claims) generally are not considered "penal" and may be recognized and enforced by U.S. courts if the criteria are satisfied.

Multiple and Punitive Damages: The Restatement does not expressly bar recognition and enforcement of judgments providing such relief, "[s]o long as the purpose of the judgment is to afford a private remedy." Restatement (Fourth) of Foreign Relations Law § 489 cmt. b.

Defamation Judgments: The federal Securing the Protection of our Enduring and Established Constitutional Heritage ("SPEECH") Act, 28 U.S.C. §§ 4101-05, precludes the recognition and enforcement of foreign defamation judgments unless: (i) "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;" or (ii) "even if the defamation law applied in the foreign court's adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located." See *also* Restatement (Fourth) of Foreign Relations Law § 481 cmt. a.

**17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?**

Yes. Finality is a prerequisite to recognition and enforcement. However, a foreign judgment may be considered final, conclusive, and enforceable even though it is subject to appeal in its country of origin or another jurisdiction. See Restatement (Fourth) of Foreign Relations Law § 481 cmt. e; see *also* 1962 Uniform Act § 2; 2005 Uniform Act § 8. Where an appeal is pending in the foreign jurisdiction, U.S. courts have discretion to stay the U.S. enforcement action until the foreign appeals are resolved. See, e.g., *Choi v. Beautri Realty Corp.*, 2016 N.Y. Misc. LEXIS 2266 (Sup. Ct. June 8, 2016) (continuing stay of enforcement proceedings pending appeal in South Korean court).

## 18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Yes. There generally is a right under U.S. procedural rules to appeal a final decision recognizing or enforcing a foreign judgment in the United States.

## 19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Yes, post-judgment interest may be claimed on the judgment sum in the United States.

For interest that accrues on the judgment sum between the entry of judgment in the foreign country and the recognizing decision in the United States, courts typically will grant interest at the rate applicable in the foreign jurisdiction under the foreign judgment. *See, e.g., Kotbi v. Najjar*, 213 N.Y.S.3d 36 (App. Div. 2024) (concluding that the lower court should have enforced a Moroccan judgment in its entirety by awarding prejudgment interest at the rate specified by the Moroccan court, rather than at New York's statutory prejudgment rate).

After entry of judgment in the United States, the applicable interest rate typically will be based on the law of the enforcing forum (U.S. state or federal), and not the foreign jurisdiction. *See, e.g., Vinogradov v. Sokolova*, 77 Misc. 3d 284, 289 (S. Ct. N. Y. 2022) ("Ordinarily, in a proceeding to enforce a foreign judgment, interest that has accrued on that judgment following its entry is assessed based on 'the law of the forum'—i.e., New York."). However, the applicable interest rate varies by state and the circumstances of the particular case. Courts have the discretion to impose a different rate than the rate provided by U.S. or state statute, particularly where the parties have contracted expressly for a different post-judgment interest rate, so long as such a rate does not constitute a "penalty."

## 20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

There is no federal requirement that a foreign judgment be converted into U.S. dollars for the purposes of recognition and enforcement, but some states do require conversion. For example, Minnesota requires that a foreign-money claims "must be docketed in United States dollars." *See* Minn. Stat. § 548.46(g).

Even if not expressly required under state law, many

courts convert foreign judgments into U.S. dollars. *See, e.g., Cont'l Transfert Technique Ltd. v. Fed. Gov't of Nigeria*, 932 F. Supp. 2d 153, 158 (D.D.C. 2013) (noting that conversion of "foreign currency amounts into dollars at judgment is the norm, rather than the exception" and holding that plaintiff was entitled to conversion of the foreign currency portions of its British arbitral award into dollars).

As to what exchange rate applies, courts adopt various approaches depending on the jurisdiction and particular circumstances of the case. U.S. courts often will "convert a judgment denominated in foreign currency to U.S. dollars using the exchange rate prevailing on the date of the U.S. judgment granting recognition or enforcement" (the so-called "judgment day" rule). Restatement (Fourth) of Foreign Relations § 490(2). However, courts sometimes apply the "breach day" rule, where the exchange rate is the rate applicable on the date the foreign judgment was issued. *See Cont'l Transfert Technique Ltd. v. Fed. Gov't of Nigeria*, 932 F. Supp. 153, 158-62 (D.D.C. 2013) (applying "breach day" rule in a proceeding confirming an arbitration award and determining that the relevant date was the day the award was issued). Additional complexities can arise where the originating jurisdiction has experienced economic instability and currency fluctuations. *See, e.g., Diaz v. Galopy Corp. Int'l, N.V.*, 79 N.Y.S.3d 494, 500-01 (Sup. Ct.) (noting that the determination of "the rate of exchange representing that equivalent [U.S. dollar] value becomes problematic due to the political climate in the original jurisdiction" and ordering additional briefing on the applicable exchange rate for a Venezuelan judgment given uncertainties regarding the "true market rate for exchanging bolivars to dollars").

## 21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

Attorneys' fees and other costs typically are not recoverable in foreign-judgment-recognition and enforcement actions except when provided for by contract between the parties or expressly under the foreign judgment. For example, in instances where the relevant foreign judgment stipulated that the defendants would indemnify plaintiffs for costs, including "costs of collection," a U.S. court held that the costs of enforcement could be recovered. *See D'Amico Dry D.A.C. v. Primera Maritime (Hellas) Ltd.*, 433 F. Supp. 3d 576 (S.D.N.Y. 2019); *see also Capital Bank of Jordan v. Alaeddin*, 2023 U.S. Dist. LEXIS 233832 (C.D. Cal. Dec. 1,



2023) (granting plaintiff's motion for summary judgment to recognize a Jordanian judgment, which included an award of attorneys' fees).

**22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

Yes, U.S. courts generally permit third-party litigation funding, though certain limitations (e.g., disclosure requirements) may apply on a state-by-state basis. In addition to third-party funding of claims or enforcement proceedings, we have observed a growing market for the securitization of judgments, as well as specialized insurance policies that protect against the risk of not recovering on a final judgment.

**23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?**

We will continue to watch whether more states, like Kentucky, take steps towards adopting a version of the Uniform Acts. Although state-by-state idiosyncrasies at the margin are likely to persist, increased adoption of the Uniform Acts could bring more consistency and predictability to foreign-judgment recognition and enforcement proceedings across the United States.

We also anticipate a growing trend of U.S. courts grappling with conflicting foreign judgments, particularly in the context of increasing numbers of disputes involving multinational technology companies. In particular, we have seen the rise of potential anti-suit injunctions in multi-jurisdictional disputes involving patent and other intellectual-property and technology-related claims. As a hypothetical example, a U.S. court could face a decision of whether to recognize and enforce a judgment entered in Country A that violates an anti-suit injunction entered in Country B. Such circumstances would require the U.S. court to undertake a more extensive substantive inquiry into the foreign proceedings, which in turn could cause tensions in the current comity-based framework for recognition and enforcement of foreign judgments. *See generally*, Restatement (Fourth) of Foreign Relations Law § 484

cmt. f ("If a foreign judgment conflicts with another final and conclusive judgment, a court in the United States has discretion to recognize the later judgment, to recognize the earlier judgment, or to recognize neither.").

**24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?**

The United States signed the Hague Choice of Courts Convention in January 2009. However, the United States has not ratified this agreement, and the prospects for future ratification appear unlikely. While some academics and practitioners proposed a federal implementing statute that would implement the Choice of Court Convention, akin to the way the Federal Arbitration Act served to implement the New York Convention, others took the position that the Convention should be implemented through a uniform law and supplemented by a federal statute, which would leave the precise contours of implementation more in the discretion of states. No consensus has been reached, and momentum towards ratification has apparently stalled for now.

**25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?**

The United States signed the Hague Judgments Convention on March 2, 2022, but has not yet ratified it (meaning the agreement has not entered force as to the United States). Some observers have noted that given the challenges faced in ratifying the Hague Choice of Courts Convention, which the United States signed in 2009 but has not ratified, it remains unclear whether the Hague Judgments Convention will ultimately be ratified (and this process could take multiple years if it proceeds at all).

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