Enforcements of judgments in the United States: overview

Antonio J Rodríguez, Alanson T Chenault, Mary Campbell Broughton and Michael A Harowski
Fowler Rodríguez

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ENFORCEMENT OF JUDGMENTS: DOMESTIC AND FOREIGN
Definitions and preliminary proceedings

1. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

Domestic

A judgment is the official and authentic decision of a court of justice on the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination (Black’s Law Dictionary, 7th edn (West 1999), page 846).

For enforcement purposes, a judgment is the final decision itself. The enforcing court will not look beyond the four corners of the document (Harvey v Johannes, 494 F. 3d 237, 244 (1st Circuit 2003)).

International

See above, Domestic

2. Is it required that a judgment is final and has conclusive effect, or are decisions in provisional/interim proceedings recognised and enforceable?

Domestic judgments

Final decisions. US courts generally require that a domestic judgment be final, conclusive and enforceable before it will be recognised and enforced.

Preliminary/provisional proceedings. As a general rule, only a final judgment is subject to recognition and enforcement in the US. However, in limited circumstances, the courts have recognised and enforced interim injunctions.

Foreign judgments

Final decisions. US courts generally require that a foreign judgment be final, conclusive and enforceable in the country where it was rendered before it will be recognised and enforced in the US (section 2, Uniform Foreign Money Judgments Recognition Act 1962 (UFMJRA); section 3(a)(2) Uniform Foreign Country Money Judgments Recognition Act 2005 (UFCMRA)). Determining whether a foreign judgment or award is final, conclusive and enforceable will be governed by the law of the country where the judgment and award was rendered (section 3(a)(2) UFCMRA; S.C. Chimexim SA v Velco Enters. Ltd, 36 F. Supp. 2d 20G 213 (S.D.N.Y. 1999); Dworkin-Cosell Interair Courier Services, Inc v Avraham, 728 F. Supp. 156, 161 (S.D.N.Y. 1989)).

Preliminary/provisional proceedings. As a general rule, only the final judgments of foreign courts are subject to recognition and enforcement in the US. However, in limited circumstances, US courts have recognised and enforced interim injunctions. US courts have applied this exception only on compelling public policy considerations, which have generally been limited to decisions on family matters (for example, child custody orders and divorce decrees) (Cardenas v Solis, 570 So. 2d 996 (Fla. 3d DCA 1990); Pilkington Bros P.L.C. v AFG Industries, Inc. 581 F. Supp. 1039, 1045 (D. Del. 1984)).

Applicable regulations/conventions

3. What conventions and regulations is your jurisdiction a contracting party to?

The US does not have a uniform law for recognition and enforcement of foreign judgments. US courts will recognise and enforce foreign judgments based on principles of comity and under state statutory provisions, where laws vary in different state and federal courts.

However, most US law finds its basis in either the:


The US is not a party to any convention on the enforcement of foreign judgments. The US is also not a party to any multi-lateral agreements for the enforcement of foreign judgments.

4. Will enforcement be automatically refused if service of the proceedings did not conform to any applicable requirements of international treaties/regulations?

Inadequate notice can constitute grounds for non-recognition of a foreign judgment in the US. The US courts require that the judgment debtor must have been given adequate notice and an opportunity to appear in the foreign proceeding from which the judgment arose (Hilton v Guyot, 159 U.S. 113, 202 (U.S. 1895); section 4(c)(1) Uniform Foreign Money Judgments Recognition Act 1962 (UFMJRA); section 4(c)(1) Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCMRA)). The standard for adequacy of notice has been defined in reference to the Due Process Clause of the Fourteenth Amendment of the US Constitution (see de la Mata v American Life Ins Co, 771 F. Supp. 1375, 1386 (D. Del. 1991)). The Supreme Court has held that “an
elementary and fundamental requirement of due process in any proceeding that is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections” (Mullane v Cent Hanover Bank & Trust Co, 339 U.S. 306, 314 (U.S. 1950)).

**Pending appeals**

5. What is the effect of pending appeal proceedings where the decision is granted?

The fact that a domestic judgment is on appeal does not prevent it from being recognised and enforced. However, the court can stay the enforcement proceeding pending the appeal.

**Foreign judgments**

The fact that a foreign judgment is on appeal in the rendering forum does not prevent it from being recognised and enforced in the US (section 2 Uniform Foreign Money-Judgments Recognition Act 1962 (UFMRA); S.C. Chimexim S.A., 36 F. Supp. 2d 213). However, US courts can stay the enforcement proceeding pending the foreign appeal (section 6 UFMRA; section 8 Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFMCURA)).

**Enforceable judgments**

6. What types of judgments in commercial matters are enforceable?

**Domestic judgments**


Judgments ordering or prohibiting the doing of acts/injunctions. US courts generally recognise and enforce final judgments of other US courts that order or instruct the doing of an act.

Declaratory judgments. Generally, judgments declaring rights are not entitled to enforcement, but can be entitled to recognition (see section 481 Restatement (Third) of Foreign Relations Law). Recognition can occur when an enforcing party wants to preclude litigation of a declaratory judgment that has been previously litigated abroad.

**Default judgments.** US courts will recognise default judgments under principles of comity (Somportex, Ltd v Philadelphia Chewning Gum Corp, 453 F.2d 435, 442 (3d Cir. 1971); John Sanderson & Co (Wool) Pty, Ltd v Ludlow Jute Co 569 F.2d 696 (1st Cir. 1978)). As long as "reasonable notice and opportunity to be heard were afforded, and other requirements of basic fairness were met" the default status of a foreign judgment will not affect the force of the judgment (Nicol v Tanner, 310 Minn. 68, 79 (Minn. 1976). Similarly, US courts will recognise and enforce an award on default in situations where the defendant was properly notified of the arbitration proceedings (Biotronik Mess-und Therapiegeraete GmbH & Co v Medford Medical Instrument Co, 415 F. Supp. 133, 140 (D.N.J. 1976)).

Judgments made without notice (ex parte)/awards. US courts will recognise ex parte judgments if the foreign judgment complied with the basic standard of American due process (Cardenas v Solis, 570 So. 2d 996, 999 (Fla. 3d DCA 1990)). In the case, the court recognised an ex parte foreign injunction, noting that a reasonably prompt hearing was accorded to the defendant thereafter. An ex parte award will also be enforceable in the US if the defendant was given fair notice, but refused to participate.

**Foreign decisions granting provisional measures.** As a general rule, only the final judgments of foreign courts are subject to recognition and enforcement in the US. However, in limited circumstances, US courts have recognised and enforced interim injunctions. US courts have applied this exception only “on compelling public policy considerations”, that have generally been limited to decisions in family matters (for example, child custody orders and divorce decrees) (Cardenas v Solis, 570 So. 2d 996 (Fla. 3d DCA 1990); Pilkinson Bros P.L.C. v AFG Industries, Inc; 581 F. Supp. 1039, 1045 (D. Del. 1984)).

**Foreign enforcement orders/(pre-judgment) attachment orders/awards.** US courts have held that an interim order requiring the posting of security to protect a possible final award is a final order (Banco de Seguros del Estado v Mut. Marine Offices, Inc, 230 F. Supp. 2d 362, 369 (S.D.N.Y. 2002); Yasuda Fire & Marine Ins Co of Europe v Continental Casualty Co 37 F.3d 345, 347-48 (7th Cir. 1994)).

Administrative decisions. US courts have held that “deference to foreign judgments on the basis of comity extends even to nonjudicial forums that are part of the administrative apparatus of sovereign states” (Apostolou v Merrill Lynch & Co 2007 U.S. Dist. LEXIS 74682, 13–14 (E.D.N.Y. Sept. 28, 2007); section 481, Reporters' Note 5 Restatement (Third) of Foreign Relations Law).

7. Are any class of judgments excluded from recognition and enforcement?

**Domestic judgments**

There are no class of judgments that are excluded from recognition and enforcement.

**Foreign judgments**

The general rule is that foreign tax and penal judgments will not be enforced by US courts (section 1(2), Uniform Foreign Money-Judgments Recognition Act 1962; section 3(b)(3), Uniform Foreign-Country Money Judgments Recognition Act 2005; section 483 Restatement (Third) of Foreign Relations Law 1987). Tax or revenue
judgments have been defined as “a judgment in favour of a foreign state ... based on a claim for an assessment of a tax, whether imposed in respect of income, property, transfer of wealth, or transactions in the taxing state” and penal judgments have been defined as a “judgment in favour of a foreign state ... and primarily punitive rather than compensatory in character” (section 483, Restatement (Third) of Foreign Relations Law 1987).

**Conditions for recognition and enforcement**

8. What are the conditions to enforce and recognise a judgment?

**Domestic judgments**

Court/arbitral court had jurisdiction. No investigation of jurisdiction will be made by the court enforcing a domestic judgment.

Defendant had proper notice of the proceedings. No investigation of the proceedings behind the judgment of another domestic court will be made.

No incompatibility with public policy. No investigation of public policy issues will be made in enforcement of a domestic judgment.

Reciprocity. All states must give full faith and credit to the official judgments of all other states (Article IV, section 1, US Constitution). All federal judgements are recognised by all other federal courts.

No conflicting domestic or foreign judgment exists. No investigation of conflict in judgments is made in enforcing a domestic judgment.

Judgment/award is final as to its effects. A domestic judgment is, by definition, final.

Limitation period. Every state has its own limitation period for enforcement of domestic judgments. Usually, a registered judgment will have a certain life based on state statute, and can be renewed before the limitation period runs out. Federal courts use the procedures of the state in which they sit unless a federal statute provides a different period (Rule 69, Federal Rules of Civil Procedure, In re Levander, 180 F.3d 1114 (9th Cir. 1999)).

Other conditions. The procedures for execution of a domestic judgment vary among the 50 states.

**Foreign judgments**

Court/arbitral court had jurisdiction. US courts will only enforce foreign judgments when the rendering court possessed both personal and subject matter jurisdiction (Hilton v Guyot, 159 U.S. 113, 202 (U.S. 1893); section 4(a)(2)(3), Uniform Foreign Money-Judgments Recognition Act 1962 (UFMA); section 4(b)(2)(G) Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCCMRA); Restatement (Third) of Foreign Relations Law, section 483 (1987). To meet this jurisdictional requirement, US courts will apply a US constitutional minimum contacts analysis to ensure that the foreign court’s jurisdiction conforms with the American due process requirements of “traditional notions of fair play and substantial justice” (EOS Transp., Inc v Agri-Source Fuels LLC, 37 So. 3d 349, 352 (Fla. 1st DCA 2010)). In determining minimum contacts, a court focuses on “the relationship among the defendant, the forum, and the litigation” (Shaffer v Heitner, 433 U.S. 186, 204 (1977)). The contacts with the forum state must be more than “random, fortuitous, or attenuated”. This requirement is “satisfied if the defendant had purposefully directed his activities at residents of the forum ... and the litigation results from alleged injuries that arise out of or relate to those activities” (Pure Fishing v Silver Star Co, 202 F. Supp. 2d 905, 915 (N.D. Iowa 2002)). The court must also scrutinise the basis for asserting jurisdiction in light of international concepts of jurisdiction (sections 421, 482, Restatement (Third) of Foreign Relations Law 1987).

Most states have also codified US standards of American due process to determine whether the foreign court has personal jurisdiction over the defendant (§ 5(a) Uniform Foreign Money-Judgments Recognition Act 1962 (UFMA); these factors are not exclusive, as the Act provides discretion to a US court to recognise a foreign judgment on “other basis of jurisdiction” (section 5(a), UFMA); section 5(a) Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCCMRA); Monks Own, Ltd v Monastery of Christ in the Desert, 142 N.M. 549, 553 (N.M. 2007)).

Defendant had proper notice of the proceeding. Inadequate notice can constitute grounds for non-recognition of a foreign judgment in the US. US courts require that the judgment debtor has been given adequate notice and an opportunity to appear in the foreign proceeding from which the judgment arose (Hilton v Guyot, 159 U.S. 113, 202 (U.S. 1893); section 4(b)(1), UFMA; section 4(c)(1), UFCCMRA). The standard for adequacy of notice has been defined in reference to the Due Process Clause of the Fourteenth Amendment of the US Constitution (de la Mata v American Life Ins Co, 771 F. Supp. 1375, 1386 (D. Del. 1991)). The US Supreme Court has held that “an elementary and fundamental requirement of due process in any proceeding that is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pending of the action and afford them an opportunity to present their objections” (Mullane v Cent Hanover Bank & Trust Co, 339 U.S. 306, 314 (U.S. 1955)).

No incompatibility with public policy. US courts will not recognise foreign judgments or awards that violate fundamental public policies of the US (section 117 Restatement (Second) of Conflict of Laws 1971; section 481(b)(3), UFMA; section 4(c)(3), UFCCMRA; Article V(2)(b) UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)). This has been narrowly construed, and US courts will deny enforcement based on public policy “only where enforcement would violate the forum state’s most basic notions of morality and justice” (Parsons & Whittmore Overseas Co v Societe Generale de L’Industrie du Papier (RAKTA) 508 F.2d 969, 974 (2d Cir. 1974); Sompornex, Ltd v Philadelphia Cheving Gum Corp, 453 F.2d 435, 443 (3d Cir. 1971)).

Reciprocity. Historically, US courts required reciprocity as a prerequisite to enforcement of a foreign judgment under common law principles of comity (Hilton v Guyot, 159 U.S. 113, 227 (U.S. 1893)). However, most jurisdictions have abandoned the reciprocity requirement, and will enforce foreign judgments without regard to whether the foreign court would recognise a US judgment (section 481, Restatement (Third) of Foreign Relations Law 1987). A few jurisdictions continue to maintain the reciprocity requirement as grounds for denying enforcement (Ga. Code Ann. section 9-12-114(10) (2002); Fla. Stat. ch. 55.605(2)(g) (2003)).

The US has declared that, on the basis of reciprocity, it will only recognise and enforce arbitral awards issued in a country that is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). The place where the award was rendered is what matters to determine whether the award will be recognised under principles of reciprocity, not whether the parties to the dispute are nationals of a signatory state (E.A.S.T., Inc v Stanford v M/V Alaija, 876 F.2d 1168, 1172 (5th Cir. 1989)).

No conflicting domestic or foreign judgment exists. Generally, US courts will not enforce foreign judgments that conflict with another domestic or foreign final and conclusive judgment (section 460(4), UFMA; section 4(c)(4), UFCCMRA; Byblos Bank Europe, SA v Sekerbank Turk Anonim Sirketi 12 Misc. 3d 792, 797–800 (N.Y. Sup. Ct. 2006)). However, some US courts have enforced foreign judgments that conflict with domestic judgments where the parties disputed the res judicata aspect of the case in the foreign forum (Ackerman v Ackerman, 517 F. Supp. 614, 623–627 (S.D.N.Y. 1981)).
Judgment/award is final as to its effects. If the award is binding by its terms, it is not a condition of enforcement that there be confirmation in the state where the award was rendered (section 487, Restatement (Third) of Foreign Relations Law 1987). In addition, an award that has been reduced to a judgment in the foreign forum can be recognised and enforced in the US under principles of comity and state statutory provisions (Victrix SS Co, SA v Salen Dry Cargo AB, 65 B.R. 466, 469 (S.D.N.Y. 1986)).

Limitation period. A federal court will apply the law of the state in which it sits in determining the limitation period for enforcing a judgment (Rule 69, Federal Rules of Civil Procedure; In re Levander, 180 F. 3d 1114 (9th Cir. 1999)). Most states have procedures for renewing a money judgment before the expiration of the limitation period.

Other conditions. Generally, US courts can refuse recognition of a foreign judgment if the:

- Judgment was rendered under a legal system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law or that raise substantial doubt about the integrity of the rendering court with respect to the judgment (Hilton v Guay, 159 U.S. 113, 202 (U.S. 1895); section 4(1)(f); Uniform Foreign Money Judgments Recognition Act 1962 (UFMJRA); section 4(b)(6), 4(c)(7) Uniform Foreign Country Money Judgments Recognition Act 2005 (UFCMJRA). A foreign legal system must merely provide procedures compatible with the requirements of due process, but “need not comply with traditional rigorous of American due process to meet the requirements of enforceability” Soc’y of Lloyd’s v Turner, 303 F.3d 325, 330 (5th Cir. 2002)).

- Specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law (section 4(c)(5), FCMJRA). Under this exception, US courts can refuse recognition of foreign judgments if the party against whom the foreign judgment was entered was denied fundamental fairness in the particular proceedings leading to the judgment (for example, political reasons). Under this defense, US courts need not find that the entire judicial system was incompatible with basic American due process (section 4, UFMJRA).

The judgment was obtained by fraud (Hilton v Guay, 159 U.S. 113, 227 (U.S. 1895); section 4(b)(2) UFMJRA; section 4(c)(2) UFCMJRA). The fraud must be extrinsic to the foreign proceeding, meaning that the judgment creditor's conduct deprived the judgment debtor of an adequate opportunity to present its case (section 4 UFCMJRA). Intrinsic fraud, meaning fraud committed on or in the presence of the foreign court (for example, false testimony or inauthentic evidence), is generally not a basis for resisting enforcement of foreign judgments in US courts. If the foreign court has considered and ruled on the allegation of fraud (whether extrinsic or intrinsic) the issue will not be reexamined by a US court.

- The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be resolved by means other than proceedings in that court (for example, a forum selection clause or agreement to arbitrate) (section 4(b)(5) UFMJRA; section 4(c)(5) UFCMJRA).

The foreign court was a seriously inconveniences forum for the trial of the action (in the case of jurisdiction based only on service) (section 4(b)(6) UFMJRA; section 4(c)(6) UFCMJRA).

9. What are the grounds for refusing recognition and enforcement?

Domestic judgments

Domestic judgments are enforceable by other courts in the US where the judgment debtor is subject to personal jurisdiction. Relief from a judgment must be sought from the court that issued the judgment. The states have various grounds for relief. In federal court, relief can be based on (Rule 60, Federal Rules of Civil Procedure (FRCP)):

- Clerical error.
- Mistake.
- Newly discovered evidence that was not possible to have been discovered in time to move for new trial.
- Fraud.
- The judgment being void, satisfied, released or discharged.

Foreign judgments

US courts are not forced to examine ex officio whether grounds for non-recognition exist before enforcing a foreign judgment. The burden of proving that any of the grounds for non-recognition apply is generally placed on the party seeking to avoid recognition of the judgment (section 4 (d), Uniform Foreign Money Judgments Recognition Act 1962, Courage Co v Cheshare Corp, 93 S.W.3d 323, 331 (Tex. App. 2002)). Some US courts have placed the burden on the party seeking enforcement to prove that no mandatory grounds for non-recognition exist (for example, personal jurisdiction, subject matter jurisdiction, or a judicial system that is incompatible with due process of law) (Bridgeway Corp v Citibank, 45 F. Supp. 2d 276, 286 (S.D.N.Y. 1999)).

Proper service

10. Does the enforcing court review service of the proceedings? Are there any conditions regarding service of the proceedings that must have been satisfied/complied with?

Domestic judgments

The 50 states each have procedures and notice requirements for enforcement proceedings, and federal courts use the procedures of the state in which they sit (Rule 69, Federal Rules of Civil Procedure (FRCP)). US courts will not review service of the original proceedings.

Foreign judgments

If the rendering court is party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Convention), US courts will consider whether the method of foreign service complied with the Hague Convention and due process of law (Ackermann v Levine, 788 F.2d 830, 840 (2nd Cir. 1986)). For aspects of service that are not addressed in the Hague Convention, US courts have held that the method of foreign service must comply with the FRCP.

If the foreign judgment was rendered in a country that is not a party to the Hague Convention or service was rendered only domestically, US courts have considered whether the method of service of process complied with the foreign country’s laws and with American due process standards (de la Mata v American Life Ins CQ 771 F. Supp. 1375, 1386 (D. Del. 1991); affirmed, 961 F. 2d 208 (3d Cir. 1992)).
Public policy

11. Does public policy include matters of substantive law?

US courts will refuse to enforce judgments that violate fundamental notions of public policy under both substantive and procedural law.

12. Can the application of a law that is different to that applicable under the choice of law rules of the enforcing court be attacked on the basis of public policy?

The enforcement of a judgment or award will not offend the public policy of the US simply because the body of foreign law on which the judgment or award is based is different from the law of the US or because the foreign law is more favourable to the judgment creditor than the law of the US. For the public policy exception to apply, the foreign award or judgment must run directly contrary to a fundamental policy of the forum where enforcement is sought, or would violate the US's most basic notions of morality and justice (Parsons & Whittemore Overseas Co v Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969, 974 (2d Cir. 1974); Hunt v BP Exploration Co (Libya), Ltd, 492 F. Supp. 885, 901 (N.D. Tex. 1980)).

13. In what circumstances and against which judgments has the principle of public policy generally been applied?

Courts rarely deny enforcement based on public policy, as a judgment is unenforceable as against public policy only to the extent that it is "repugnant to fundamental notions of what is decent and just in the state where enforcement is sought" (Ackermann v Levinia 788 F.2d 830, 841 (2d Cir. 1986)). US courts have found the public policy exception applicable where:

- A foreign judgment undermines the First Amendment rights of the US Constitution (example, freedom of speech) (Matusevitich v Telnikoff, 877 F. Supp. 1 (D.D.C. 1995)).
- The foreign law contained an irrebuttable presumption on tort causation (Sanchez Osorio v Dole Food Co 665 F. Supp. 2d 1307 (S.D. Fla. 2009)).
- The foreign law contravened federal tax priority in a bankruptcy claim (Overseas Insns SA P.A. v U.S., 911 F.2d 1146 (5th Cir. 1990)).
- The defendant died before a verdict was rendered against him (In re Estate of Davis, 31 Misc. 2d 270 (N.Y. Sur. Ct. 1961). Aff'd mem., 227 N.Y.S.2d 894 (1962)).
- The foreign judgment awarded spousal maintenance after the wife's remarriage. (Pentz v Kupping, 31 Cal. App. 3d, 590 (Cal. App 2d Dist. 1973)).

Provisional remedies

14. Is it possible to apply for provisional measures from the enforcing court pending the enforcement proceedings?

Domestic judgments

Depending on the court and state in which enforcement is sought, a judgment creditor may be able to attach assets of the judgment debtor in that jurisdiction pending enforcement proceedings (Rule B, Supplemental Rules for Admiralty or Maritime Claims and individual state attachment statutes).

Foreign judgments

Depending on the court and state in which enforcement is sought, there are procedures for provisional measures pending the enforcement proceedings. For example, under federal or state rules, a judgment creditor may be able to attach assets of the judgment debtor in that jurisdiction pending enforcement proceedings (Rule B, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions).

Interest

15. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

Domestic judgment

For most federal civil judgments, interest runs from the date of judgment until the date paid. It is calculated at a rate that is equal to the weekly average one-year constant maturity treasury yield, as published by the Federal Reserve System for the preceding calendar week (Title 28 US Code 1961). Each state has its own provision for post-judgment interest.

Foreign judgment

A US court's power to enforce a judgment is confined to the four corners of the judgment itself (the meaning as solely represented by its written content) (Harvey v Johanns, 494 F. 3d 237,244 (1st Cir. 2007)). Therefore, interest is only recoverable to the extent stated in the judgment.

Actual enforcement

16. What is the enforcement procedure when a declaration of enforceability is granted?

Domestic judgments

In federal courts, execution of a judgment is governed by Rule 69 of the Federal Rules of Civil Procedure, which provides that the procedure is governed by the rules of the state where the federal court sits. Each state has rules for registering the judgment or filing a new action, obtaining a writ of execution, service of the writ and notice on the judgment debtor, claiming exemption form execution, contesting such a claim, and discovery.

Foreign judgments

The enforcement of a foreign judgment is subject to the laws of the state in which the judgment creditor is seeking to enforce that judgment. Each state has its own statutes and/or rules that set out the formal proceedings and conditions under which a judgment can be enforced (section 3 Uniform Foreign Money-Judgments Recognition Act 1962 (UFMJRA), section 7(b) Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCMJRA)). Some states require registration of the foreign judgment, along with specific notice requirements, before any actions can be taken towards execution of the judgment (Tex. Civ. Prac. & Rem. Code section 36.004); Fla. Stat. section 55.604). Other states require that an original proceeding be filed to enforce a foreign judgment (that is, a petition or complaint for confirmation and enforcement of the judgment) (Baker v Thinkstream, Inc, 2008 2535 (La. App. 1 Cir. 06/19/09); 20 So. 3d 1103; La. C.C.P. 2541).

17. Can defendants oppose the enforcement procedure, and if so, on what grounds/defences?

Domestic judgments

The defendant can oppose the enforcement proceeding. The enforcing court's authority varies from state to state. Some states
only allow for review of domestic judgments on grounds that are specifically provided for under that state’s laws.

**Foreign judgments**

The defendant can oppose the enforcement proceeding. The enforcing court’s authority varies from state to state. Some states only allow for review of foreign judgments on grounds that are specifically provided for under that state’s laws. In some cases, the grounds for review of a foreign judgment are limited to those provided for under the Uniform Foreign Money-Judgments Recognition Act 1962 (UFCMJRA) or the Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCMJRA). Grounds for review include the following:

- The rendering court did not have subject matter jurisdiction over the underlying lawsuit.
- The defendant did not receive notice of proceedings in foreign country in sufficient time to defend.
- The foreign country judgment was obtained by fraud.

**ENFORCING FOREIGN JUDGMENTS**

**Jurisdiction**

18. Is the enforcing court entitled to consider the grounds on which the foreign court assumed jurisdiction (and if so, on what jurisdictional grounds can enforcement be refused)?

US courts will not enforce judgments rendered by a foreign court that obtained jurisdiction by means inconsistent with the American due process standard, including:

- That the jurisdiction is based on the claimant’s nationality when the forum has no relation to the case or parties other than the plaintiff’s nationality (Sompornex, Ltd v Philadelphia Chewing Gum Corp. 318 F. Supp. 161, 165 (E.D. Pa. 1970)).
- When the foreign court has jurisdiction based solely on the fact that the defendant owns assets in that country.
- When a foreign long-arm statute lacks protection of due process (Falcon Mfg. (Scarborough), Ltd v Ames 53 Misc. 2d 332 (N.Y. Civ. Ct. 1967)).

19. If the foreign court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

**Exorbitant ground of jurisdiction**

If a judgment debtor did not appear to contest the foreign court’s personal jurisdiction in the judgment forum, the judgment debtor can challenge the jurisdiction of the rendering court in resisting enforcement (U.S. Monks Own, Ltd v Monastery of Christ in the Desert, 142 N.M. 549, 552 (N.M. 2007); section 482 Restatement (Third) of Foreign Relations Law 1987).

**Voluntary acknowledgement**

- Generally, US courts will not refuse recognition for lack of personal jurisdiction if the defendant voluntarily appeared in the proceeding, other than for the purpose of (section 5(a)(2), Uniform Foreign Money-Judgments Recognition Act 1962 (UFCMJRA));
- Protecting property seized or threatened with seizure in the proceeding;
- Contesting the jurisdiction of the court over the defendant.

**Enforcement proceedings**

20. Is the enforcement of a foreign judgment, arbitral award or deed subject to formal proceedings or simplified procedures?

The enforcement of a foreign judgment is subject to the laws of the state in which the judgment creditor is seeking to enforce that judgment. Each state has its own statutes and/or rules that set out the formal proceedings and conditions under which a judgment can be enforced (Chapter 3 Uniform Foreign Money-Judgments Recognition Act 1962 (UFCMJRA); section 7(b) Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCMJRA)). Some states require registration of the foreign judgment, along with specific notice requirements, before any actions can be taken towards execution of the judgment (Tex. Civ. Prac. & Rem. Code section 36.004; Fla. Stat. section 55.604). Other states require that an original proceeding be filed to enforce a foreign judgment (that is, a petition or complaint for confirmation and enforcement of the judgment) (Baker v Thinkstream, Inc, 2008 2535 (La. App. 1 Cir. 06/19/03); 20 So. 3d 1109; La. C.C.P. 2541).

Formal proceedings must be initiated to enforce foreign arbitral awards. However, the procedures for enforcement provided in the Federal Arbitration Act (FAA) are intended to simplify the process (Title 9, sections 1–16, 201 (US Code Service)). To advance the speedy resolution of arbitral proceedings, confirmation of an arbitral award is intended to be summary in nature, and must be initiated and heard through federal motion practice (Booth v Hume Pub., Inc. 902 F.2d 925, 932 (11th Cir. 1990). A full hearing in the proceeding may not be required, as a motion to confirm an award can be decided on the papers supported by affidavits, without oral testimony (Booth v Hume Pub, Parsons & Whittemore Overseas Co v Societe Generale de L’Industrie du Papier (RAKTA) 508 F.2d 969 (2d Cir. 1974)). Confirmation of a foreign arbitral award is characterised as a “summary proceeding” that merely converts what is already a final decision into a judgment of a court (Ulangsu Changlong Chem. Co v Burlington Bio-Medical & Sci. Corp. 399 F. Supp. 2d 165, 168 (E.D.N.Y. 2005)).

21. Are applicants required to institute a new action on the judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?

Some, but not all, states require that a new action on the underlying claim be filed in state court to have the foreign judgment recognised for execution in the forum. All procedural formalities must be followed such as proper citation and service of process on the judgment debtor (Baker v Thinkstream, Inc, 2008 2535 (La. App. 1 Cir. 06/19/03); 20 So. 3d 1109; La. C.C.P. 2541).

22. What is the general outline of enforcement proceedings?

**Appointing counsel**

No attorney is required for the enforcement of foreign judgments or awards. However, it is highly recommended due to the complexity of the US legal system and the variety of laws among the different federal and state jurisdictions.

**Security for costs**

In some state jurisdictions, a filing fee is required on filing the authenticated copy of the foreign country judgment or award with the particular court. In cases where an original proceeding must be filed, filing fees for new petitions or complaints are generally required. US courts can require the party opposing recognition of a judgment or award to post security in situations where the court
stays the confirmation proceeding while the foreign court of law where the judgment or award was rendered adjudicates a final decision on appeal (Étov v Amandia, 34 Misc. 3d 410, 413–414 (N.Y. Sup. Ct. 2011)); Article IV, UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)

Jurisdiction and venue

State courts where the judgment creditor has properly filed a copy of the foreign judgment and is seeking to execute and enforce that judgment have original jurisdiction to recognise and enforce foreign judgments. However, this authority differs between the US states, as enforcement and recognition of a foreign judgment is governed by individual state law procedures (Fla. Stat. section 55.604(1) and Tex. Civ. Prac. & Rem. Code section 36.0044; La. C.C.P. 80(C)).

Federal district courts in the U.S. have original jurisdiction to recognize and enforce arbitral awards falling under the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) (Title 9, section 203 US Service Codé). An action brought in state court can be removed to federal court at any time before trial. (Title 9, section 205, US Code). Generally, venue is proper in any federal court that has personal jurisdiction over the defendant or where the assets are found (Audi NSU Auto Union Aktiengesellschaft v Overseas Motors, Inc, 418 F. Supp. 982, 984 (E.D. Mich. 1976); section 487 Restatement (Third) of Foreign Relations Law1987; Title 9 section 204 US Service Codé).

Adversarial or without notice (ex parte)

Notice of any filing in a US court seeking recognition and enforcement of a foreign judgment or arbitral award must be properly served on the adverse party, and the adverse party must be provided the opportunity to be heard (Fla. Stat. section 55.604; Tex. Civ. Prac. & Rem. Code section 36.0044; La. C.C.P. 254); Title 9 section 9 US Codé.

Timing

Depending on the particular state's procedural rules, a judgment debtor has within approximately thirty days to file a motion opposing or challenging the recognition and/or enforceability of a foreign judgment. Depending on the basis upon which a judgment debtor is contesting the judgment, courts have discretion to grant additional time for the parties to conduct discovery and/or schedule adversarial hearings in connection with the challenge of the foreign judgment. The time between filing, confirmation and enforcement of the foreign judgment can range between several months to over one year.

Fees

Court fees are not recoverable by either party. The party seeking enforcement will incur filing fees in connection with the petition for confirmation and enforcement of the foreign judgment or arbitral award. The amount of filing fees can vary between federal and state jurisdictions.

Appeals

An appeal can be taken from an order confirming or denying confirmation of an award or judgment (Title 9, section 16(a)(1)(D) US Code Reading & Bates v Baker Energy Resources 976 S.W.2d 702, 705 (Tex. App. 1998); Chabert v Bacque, 694 So.2d 805 (Fla. 4th DCA 1997)). However, the party seeking the appeal may be required to pay or post security while that appeal is being heard by the court system (Fla. Stat. section 55.509; Tex. Civ. Prac. & Rem. Code section 51.01).

23. Can the enforcing court review the foreign judgment as to its substance if all formalities were complied with and if the judgment meets all requirements?

The enforcing court's authority varies from state to state. Some states only allow for review of foreign judgments on grounds that are specifically provided for under that state's laws. In some cases, the grounds for review of a foreign judgment are limited to those provided for under the Uniform Foreign Money-Judgments Recognition Act 1962 (UFMJRA) and the Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCMJRA). Examples of grounds for review include that the:

- rendering court did not have subject matter jurisdiction over the underlying lawsuit.
- defendant did not receive notice of proceedings in the foreign country in sufficient time to defend.
- foreign country judgment was obtained by fraud.

24. What are the documentary requirements for enforcement?

Documentary requirements

In general, a properly authenticated copy of the foreign judgment must be filed with the clerk of court for the state in which the judgment creditor is seeking enforcement. In addition, an affidavit showing the names and last known postal office addresses of the judgment debtor and the judgment creditor are required to be filed along with the foreign judgment (Tex. Civ. Prac. & Rem. Code section 36.0044 and section 36.0042(a); Fla. Stat. section 604; La. C.C.P. 254). For states requiring original proceedings, a petition or complaint must be filed along with adherence to rules of proper citation and service.

Authentication

A copy of the foreign judgment sought to be enforced must be authenticated by the court that issued the judgment. First, the custodian of the judgment, court clerk or similarly authorized official in the country, must certify the correctness of the copy. A second certificate must also be attached attesting to the genuineness of the signature and official capacity of the custodian, clerk or other official who made the first certificate. Finally, a consul general, consul or other consular agent of the US must certify the document (Tex. Civ. Prac. & Rem. Code section 36.0041, Tex. R. Evid. section 902(3); Fla. Stat. 55.604; La. C.E. Article 902(3)).

25. Is it required to translate the judgments into the language of the state where enforcement is requested?

Translations

Generally, state statutes governing the enforcement of foreign judgment do not specifically require translation of foreign judgments written in languages other than English. However, state evidence rules may require an English translation of the judgment, certified as correct by the translator and supported by the translator’s affidavit setting forth his qualifications (Tex. R. Evid. section 1009; La. C.E. Article 902(3)).

Other languages

Not applicable.

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Certification

The translation must be certified by an official or sworn translator or by a diplomatic or consular agent. There is no specific rule governing the nationality of the diplomatic or consular agent who may provide such a certification (Tex. R. Evid. 1009; La. C.E. Article 902(3)).

26. What is the format of the application for a declaration of enforceability?

The format for the application for a declaration of enforceability of a foreign judgment varies between US states. Some states only require that the foreign judgment be filed with the clerk of court in which the judgment creditor seeks to enforce the judgment. In addition, an affidavit may be required providing the name, social security, last known postal office address of the judgment debtor and the judgment creditor along with the judgment. This is for the purpose of mailing notice to the judgment debtor (Tex. Civ. Prac. & Rem. Code section 36.004; Fla. Stat. section 55.604). However, other jurisdictions may require that an original proceeding, in the form of a petition or complaint, be filed in the court seeking recognition and enforcement of that judgment (La. C.C.P. 2541; Baker v Thinkstream, Inc, 2008 2535 (La. App. 1 Cir. 06/19/09); 20 So. 3d 1109).

27. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?

Judgment

The requirements for filing a foreign judgment vary in each US state. Some jurisdictions only require that the actual foreign judgment be recorded with the clerk of court’s office and nothing further. Other jurisdictions require a new action to be filed with basic facts regarding the foreign judgment and the basis for recognition and enforcement in that particular state’s jurisdiction (Tex. Civ. Prac. & Rem. Code section 36.004; Fla. Stat. section 55.604; La. C.C.P. 2541; Baker v Thinkstream, Inc, 2008 2535 (La. App. 1 Cir. 06/19/09); 20 So. 3d 1109). In either scenario, the basic information establishing the identity of the parties, nature of the dispute, basis for jurisdiction of originating court and amount of award must be included in the application for confirmation and enforcement.

Claim as awarded
See Judgment.

Facts and legal grounds
See Judgment.

Appeals
If the foreign judgment is no longer appealable, the application must state this.

28. Is it required to convert the value of the judgment into the local currency?

There is no requirement for conversion of currency in the Uniform Foreign Money Judgments Recognition Act 1962 (UFMJRA) or the Uniform Foreign-Country Money Judgments Recognition Act 2005 (UFCMJRA). However, it is possible that the foreign currency obligation in the foreign judgment is required to be converted to a dollar equivalent (section 823 Restatement (Third) of Foreign Relations Law 1987; Et Universal v Phoenician Imports 802 S.W.2d 799, 801–804 (Tex. App 1990)).

PROPOSALS FOR REFORM

29. Are any changes to the law currently under consideration or being proposed?

The authors are not aware of any proposals for reform, or whether the US is close to entering any treaties on enforcement of foreign judgments.
ONLINE RESOURCES

National Conference of Commissioners on Uniform State Laws
W www.uniformlaws.org
Description. The website of the Uniform Law Commission (ULC) states that it has worked for the uniformity of state laws since 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the US Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute.

Uniform Foreign Money-Judgments Recognition Act 1962 (UFMJRA)
W www.uniformlaws.org/Acts.aspx
Description. See above.

Uniform Foreign-Country Money Judgments Recognition Acts 2005 (UFCMJRA)
Description. See above.

United Nations Commission on International Trade Law
W www.uncitral.org
Description. This is the United Nations website for international conventions.

UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)
Description. See above.

Organization of American States Foreign Trade Information System (SICE)
W www.sice.oas.org
Description. This website contains information on trade information, policy and legislation.

US Government Publishing Office
W www.gpo.gov
Description. The website contains statutes under the US Code. The information is current.
Description. The website contains specific statutes under Title 9 of the US Code. The information is current.
**Antonio J Rodriguez, Partner**

Fowler Rodriguez  
T +504 523 2600  
F +504 723 2705  
E ajr@frfirm.com  
W [www.frfirm.com](http://www.frfirm.com)

**Professional qualifications.** Admitted to practice in State of Louisiana; US District Courts - Eastern District of Louisiana, Middle District of Louisiana, Western District of Louisiana, Southern District of Mississippi, Southern District of Texas; US Courts of Appeal - Fifth Circuit, Eleventh Circuit, Fourth Circuit, First Circuit; US Supreme Court; US Court of International Trade  

**Areas of practice.** Maritime law; environmental and energy law; litigation.

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**Mary Campbell Broughton, Partner**

Fowler Rodriguez  
T +251 344 4721  
F +251 343 7503  
E mcb@frfirm.com  
W [www.frfirm.com](http://www.frfirm.com)

**Professional qualifications.** Admitted to practice in States of Louisiana and Alabama; US District Courts - Eastern District of Louisiana, Middle District of Louisiana, Western District of Louisiana, Northern District of Alabama, Middle District of Alabama, Southern District of Alabama, Northern District of Florida; US Court of Appeal for the Fifth Circuit  

**Areas of practice.** Maritime casualty; personal injury; cargo; pollution; product liability; insurance coverage; commercial disputes.

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**Alanson T Chenault, Partner**

Fowler Rodriguez  
T +504 523 2600  
F +504 723 2705  
E atc@frfirm.com  
W [www.frfirm.com](http://www.frfirm.com)

**Professional qualifications.** Admitted to practice in State of Louisiana; US District Courts - Eastern District of Louisiana, Middle District of Louisiana, Western District of Louisiana, Southern District of Texas; US Courts of Appeal for the Fourth, Fifth and Eleventh Circuits; US Supreme Court  

**Areas of practice.** Marine law; environmental law; marine casualties and pollution response; collision; regulatory investigation; cargo claims; insurance; personal injury; commercial matters; appellate work.

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**Michael A Harowski, Partner**

Fowler Rodriguez  
T +504 523 2600  
F +504 723 2705  
E mharowski@frfirm.com  
W [www.frfirm.com](http://www.frfirm.com)

**Professional qualifications.** Admitted to practice in State of Louisiana; US District Courts - Eastern District of Louisiana, Middle District of Louisiana, Western District of Louisiana, Southern District of Texas, Northern District of Florida  

**Areas of practice.** Maritime law; environmental law; marine casualty and pollution response; regulatory investigation; insurance coverage and defence; personal injury; contract law; civil litigation.