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Foreign Matters

How to obtain recognition of foreign-court judgments

By Neil A.F. Popovic

In some cases, obtaining a judgment signals the end of litigation. In others, it may be just the beginning, particularly if the judgment comes from a foreign country. Turning a foreign judgment into actual relief requires two steps: recognition and enforcement. This article focuses on recognition.

Recognition in California is governed by the Uniform Foreign Money-Judgments Recognition Act for actions filed before Jan. 1, 2008, and the Uniform Foreign-Country Money-Judgments Recognition Act for actions filed on or after that date. The road to recognition can be tricky, but two recent developments — adoption of the revised Act and the California Supreme Court's recent decision in *Manco Contracting Co. v. Bezdikian*, 45 Cal.4th 192 (2008) — have helped to clarify the standards and the process.

• *The original judgments act*

In an effort to encourage states to codify their rules on recognition of foreign-country money judgments, the National Conference of Commissioners on Uniform State Laws in 1962 proposed the original act. The idea was to codify the standards for recognition so that reciprocity could be certified quickly and without controversy because courts in many civil-law countries required reciprocity as a prerequisite for recognition of foreign — including U.S. — judgments.

California adopted the original act in 1967. A total of 30 states, along with the District of Columbia and the U.S. Virgin Islands, eventually adopted the act in one form or another. The California version, codified in of the Code of Civil Procedure, applies to "any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal." The act allows a court to stay recognition proceedings if the underlying foreign judgment is on appeal or an appeal is authorized and planned.

A qualifying foreign judgment is deemed "conclusive between the parties" and, once recognized, is enforceable in the same manner as a sister-state judgment. The original act does not specify a statute of limitations. The act has no bearing on non-money judgments or other foreign judgments "in situations not covered by" the act, such as judgments for taxes, a penalty or family support.

Under the original act, a California court may not recognize a foreign judgment where: (1) the foreign judicial system does not provide impartial tribunals or lacks procedural due process; (2) the foreign court did not have personal jurisdiction over the defendant; or (3) the foreign court did not have subject matter jurisdiction. A court in California need not recognize a foreign judgment if: (1) the defendant did not receive timely notice of the foreign proceedings; (2) there was "extrinsic fraud"; (3) the substantive basis for the judgment "is repugnant to the public policy of this state"; (4) the judgment conflicts with another final judgment; (5) the foreign proceeding conflicted with the parties' agreement about how or where to settle their dispute; or (6) if jurisdiction was based on personal service, resulting in a forum that was "seriously inconvenient" for the defendant.

Because the grounds for denying recognition all relate to the conduct of the underlying foreign case, the fate of a foreign judgment in California may depend on circumstances that occurred long ago and far away.

• *The revised act*

According to the uniform state law commissioners, the original judgments act largely succeeded "in carrying out its purpose of establishing uniform and clear standards under which state courts will enforce the foreign-country judgments that come within its scope," which, in turn, helped satisfy the reciprocity concerns of foreign courts. However, the act was neither universally nor uniformly adopted. Further, even identical statutory language was interpreted differently by courts in different states. In response, the commissioners in 2005 complete several revisions aimed at updating and clarifying the act's definitions; reorganizing and clarifying its scope; setting out procedures for obtaining recognition; clarifying and expanding the grounds for denying recognition; allocating the burden of proof; and establishing a statute of limitations.

The California legislature adopted the revised act in 2007, which, as noted above, went into effect on Jan. 1, 2008.

The original act's references to "foreign states" and "foreign judgments" apparently led to confusion in some state courts because these terms, as the commissioners noted, are "terms of art generally used in connection with recognition and enforcement of sister-state judgments." The revised act, with its use of the terms "foreign country" and "foreign-country judgment," clarify that the act applies only to

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judgments from foreign countries.

The original act applies to "any judgment of a foreign state" but does not specify whether the judgment has to be issued by a court. The revised act includes the word "court" in the definition of "foreign country judgment." Foreign arbitral awards remain subject to the U.S. Arbitration Act. However, as with the original act, a judgment of a foreign court confirming or setting aside an arbitral award is covered by the revised act.

The revised act applies to any foreign judgment that, "under the law of the foreign country where rendered, is final, conclusive, and enforceable." Like the original act, the revised act provides that a court "may stay any proceedings with regard to the foreign-country judgment" if an appeal is pending or authorized and planned in the foreign country. The commissioners explain that "if the effect of an appeal under the law of the foreign country in which the judgment was rendered is to prevent it from being conclusive or enforceable between the parties, the existence of a pending appeal in the foreign country would prevent application of this act."

The revised act places the burden of proof for establishing its applicability on the proponent of recognition while placing the burden for establishing grounds to deny recognition on the party resisting recognition. The original act did not address the procedure for seeking recognition. The revised act provides that a party may seek recognition by filing a separate recognition action or, if a proceeding is already pending, raising the issue by "counterclaim, cross-claim or affirmative defense." Once recognized, a foreign country judgment is "conclusive between the parties to the same extent as the judgment of a sister state" and "enforceable in the same manner and to the same extent as a judgment rendered in this state."

With minor changes in wording, the revised act maintains the original act's mandatory grounds for denying recognition. Thus, a court must deny recognition if the foreign judicial system "does not provide impartial tribunals" or procedures compatible with due process or if it lacks personal jurisdiction or subject matter jurisdiction.

Discretionary grounds for non-recognition also are similar to the original Act. These include: insufficient notice; fraud that "deprived the losing party of an adequate opportunity to present its case"; conflict with public policy; conflict with another judgment; conflict with the parties' agreement about how to resolve disputes; and inconvenience of the foreign forum in situations in which jurisdiction was based on personal service.

The revised Act, in its subsection 2, spells out the meaning of extrinsic fraud. Subsection 3 clarifies that the public policy test applies not just to a "cause of action," but also to the judgment as a whole, and that the exception looks to the public policy of the United States as well as the forum state. Subsections 1, 4, 5 and 6 are substantively unchanged.

The revised act adds two new grounds for denying recognition. Subsection 7 deals with "circumstances that raise substantial doubt about the integrity of the rendering court." This subsection allows a court to deny recognition if it finds corruption in the specific proceedings leading to the foreign judgment even if the foreign judicial system is generally free of corruption. Subsection 8 addresses lack of due process in the foreign proceedings. This subsection allows the forum court to deny recognition where the proceedings in the foreign court were not compatible with due process even if the foreign country's overall judicial system generally complies with due process.

As with the original act, substantive grounds for denying recognition under the revised act derive mainly from flaws in the underlying foreign proceedings. Accordingly, counsel who envision future enforcement of a foreign judgment in California should pay careful attention to the conduct of the foreign proceedings.

The original act does not specify a statute of limitations. In *Dore v. Thornburgh*, 90 Cal. 64 (1891), decided long before the original act, the California Supreme Court applied the catch-all limitations period of four years for actions not otherwise provided for. The revised act as promulgated by the uniform state-law commissioners, specifies 15 years. The California version shortens this period to 10 years, which is the same as the limitations period to enforce a domestic judgment.

The revised act left substantively intact the provisions relating to challenges based on lack of personal jurisdiction. It also carries forward the provision that foreign judgments not covered by the act may be recognized "under principles of comity or otherwise."

California's adoption of the revised act resolves many, but not all, outstanding issues regarding recognition of foreign-country money judgments. The California Supreme Court's *Manco* decision fills two important gaps in ways that narrow the differences between recognition under both versions of the act.

The court, in *Manco*, addressed when a foreign judgment is final for purposes of recognition and the statute of limitations for a recognition action. The key question on finality was: "When a foreign judgment is appealed, and the foreign nation's law provides that a judgment on appeal is not final, does [CCP] section 1713.2 permit a California court to recognize the judgment?" The answer, according to the *Manco* opinion, is no because the most reasonable interpretation of section 1713.2 "is that the law of the nation where the judgment was rendered determines whether the judgment is sufficiently final, conclusive and enforceable to be subject to recognition in California."

On the statute of limitations, the Supreme Court applied the 10-year limitations period that applies to actions to enforce a sister-state judgment because the original act provides that a "foreign judgment is enforceable in the same manner as the judgment of a sister state, which is entitled to full faith and credit." (However, as Justice Joyce Kennard pointed out in dissent, the 10-year statute applies to actions for enforcement, not recognition.) These two holdings render accrual and the statute of limitations in California recognition actions the same under the original act as they are under the revised act.

The California Legislature's adoption of the revised act and the *Manco* decision provide meaningful guidance on recognition of foreign judgments in at least two important areas: the determination of finality (when an action for recognition accrues) and the statute of limitations. Under *Manco* and the revised act, a cause of action for recognition accrues at the point that a foreign judgment becomes final, conclusive and enforceable under the law of the foreign country where the judgment was rendered. If an appeal affects finality in the foreign country, then it precludes recognition in California.

The *Manco* ruling and the revised act also yield a unified rule for the statute of limitations — 10 years. Under the revised act, the statutory language is explicit. Under *Manco*, the court adopted the limitations period for enforcement of sister-state judgments.❖