

## The Recognition and Enforcement of Foreign Awards in New York State [1]

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This article is intended to briefly summarize of the options available to someone who has obtained a judgment outside the United States, and wishes to enforce that judgment in New York.

Assume that you have obtained a judgment against somebody, or against some corporation, from a judicial body located outside the United States. The entity against which you received the judgment (the judgment debtor) has relocated to New York, or they have significant assets there, and you now want to enforce your judgment in New York in order to collect what you are owed.

Unlike judgments obtained in different jurisdictions within the United States, judgments obtained outside of them are not entitled to "full faith and credit" under federal law. However, there are several different paths available to the holder of a foreign judgment who wishes to enforce it in New York.

### Article 53 of the New York State Civil Practice Law and Rules

Article 53 of the aforementioned New York State law, also known as the Uniform Foreign Country Money-Judgments Recognition Act, allows for the recognition and enforcement of foreign judgments for the recovery of a sum of money, excepting judgments for taxes, fines or penalties, or a judgment in support of family or matrimonial matters. [3] The foreign country judgment to which it applies must be final, conclusive and enforceable where rendered, even though it may be subject to appeal or an appeal may in fact be pending [4]. It should be noted that it is immaterial to recognition and enforcement of a foreign country money judgment whether there is any basis for the exercise of personal jurisdiction over the judgment debtor in New York where (1) neither federal due process nor New York law requires that New York court have jurisdictional basis for proceeding against judgment debtor, and (2) requiring that judgment debtor have "presence" in or some other jurisdictional nexus to state of enforcement would unduly protect debtor and enable him easily to escape his just obligations under foreign country money judgment [5].

Section 5304 sets forth the grounds for non-recognition of a foreign

judgment. Grounds for non-recognition include: 1. the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; 2. the foreign court did not have personal jurisdiction over the defendant; 3. the foreign court did not have jurisdiction over the subject matter; 4. the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend; 5. the judgment was obtained by fraud; 6. the cause of action on which the judgment is based is repugnant to the public policy of this state; 7. the judgment conflicts with another final and conclusive judgment; 8. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or 9. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. Some of these grounds are discretionary, and some of them require that the court deny recognition.

The fact that a foreign judgment was a default judgment will not by itself be a sufficient defense against a claim for its recognition and enforcement in New York. It can, however, support the other defenses enumerated above and in particular those regarding a lack of personal jurisdiction. In this context a foreign long-arm statute will be examined to see if it is overly broad, principally by comparing it to the New York statute, and a failure to appear in the action may be deemed to have been justified.[6]

Where the foreign judgment does meet the requirements for recognition and enforcement under Article 53 these may be obtained by an action based on the judgment itself, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense [7]. In the context of these proceedings the underlying merits of the dispute will not be examined.

If an appeal is pending in the foreign jurisdiction, or the judgment debtor persuades the New York court that he has the right to appeal and intends to take advantage of it, he may request that the New York proceedings be stayed pending the appeal [8].

Comity

What if the foreign judgment you want to enforce is not a money judgment or otherwise fails to meet the requirements of Article 53? Section 5307 of the CPLR explicitly states that, "This article does not prevent the recognition of a foreign country judgment in situations not covered by this article." In other words, the court retains discretion to recognize and enforce a foreign judgment in other circumstances as well. In these cases enforcement decisions will be made on the basis of the

somewhat amorphous concepts of “comity”, translated to plain English as “respect” or mutual accommodation”. While some of these considerations will be similar to those enumerated in Article 53, others may be taken into account as well, such as whether the foreign tribunal would recognize a judgment from New York, and issues of public policy.

## Enforcement of Foreign Child Support and Maintenance (Alimony) Awards

A special regime exists in relation to the enforcement of foreign support awards in a family law context. Federal law provides that "States may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a), to the extent consistent with Federal law". The term "State" includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures of state law. These rules were made a part of New York State law in the New York Family Court Act 580-101 to 580-905. The law also establishes procedures for the subjection of a foreign resident to New York jurisdiction for the purpose of obtaining a support order against them, as well as a range of evidentiary mechanisms for managing such a case. The particulars of these rules are beyond the scope of this article.

It should be noted that in accordance with federal law New York has established reciprocal ties for the enforcement of support decrees with the following countries: Australia, Austria, Canada (all Provinces), Czech Republic, Finland Germany, Hungary, Ireland, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Sweden, Switzerland, and the United Kingdom. However, the language of the New York law does not preclude the recognition and enforcement of support orders from countries that do not appear on the list, so long as it can be demonstrated that the foreign jurisdiction has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to those of New York.

More information can be found at the US Department of State's website [here](#).

## International arbitration

The United States is a signatory of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly referred to as the "New York Convention". The treaty has been incorporated in the federal law of the United States which allows for its enforcement [9].

The treaty as enforced in the United States recognizes the legitimacy and binding nature of arbitral decisions given in commercial disputes between citizens of the United States and non-citizens, or even where the arbitral decision is wholly between US citizens but some reasonable nexus to a foreign country exists [10]. In this context a corporation is a citizen of the United States if it is incorporated or its principal place of business is in the US. Actions for confirmation of arbitral awards initiated in accordance with the New York Convention will be submitted to the United States' District Courts, regardless of the amount in controversy [11]. The action for confirmation of an arbitral award (a prerequisite for its enforcement) must be filed within three years of the award having been made [12]. It might be noted that an action for the confirmation of an arbitral award not covered by the Convention must be made within one year of the award [13]. The grounds for denying recognition and enforcement are, for the most part, related to issues of capacity, notice requirements and the arbitral award's having been given in accordance with the original arbitration agreement and the laws of the country in which it was given [14]. The terms of the Convention are more flexible than those which pertain to ordinary arbitration based actions in the United States.

Though it is not the subject of this article, it should be noted that the Convention deals not only with the confirmation and enforcement of arbitral awards, but also with the enforcement of arbitration agreements. Because of the complexity which sometimes arises in terms of enforcing the judgments of foreign courts in the United States, and the difficulty of enforcing the judgments of the United States courts abroad, it is advisable to determine whether the partner to a contemplated transaction is a citizen of a country which is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and to consider including an appropriately drafted arbitration clause in the agreement you reach with them.[15].

The United States generally, and New York in particular, encourages international trade by supporting the negotiated terms of contractual relationships even where they refer to foreign judiciary or arbitral bodies as being authorized to settle disputes. Similarly, where jurisdiction has, in the view of the New York courts, been fairly obtained by a foreign court, and basic requirements of due process adhered to, foreign rulings will generally be recognized and enforced in New York without an examination of the merits of the underlying dispute.

[1] 2005 Neil J. Saltzman. The general information contained herein is offered as a public service only and does not constitute legal advice. Every situation should be reviewed in light of its own unique fact pattern before planning a course of action.

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[3] CPLR 5301 (b); It might be noted that the issue of equitable distribution, though raised in a foreign matrimonial proceeding, may be considered a judgment for the recovery of money (see *Burrelle v. Gilbert*, 2005 NY Slip Op 51471U, AD 2d (2005)).

[4] CPLR 5302

[5] *Lenchyshyn v. Pelko Elec., Inc.*, 281 A.D.2d 42 (2001)

[6] See, for example, *Siedler v. Jacobson* (1976) 86 Misc 2d 1010, 383 NYS2d 833.

[14] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), Article V

[15] The following countries are signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia & Herzegovina, Botswana, Britain and Northern Ireland, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, Italy, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Grenadines, Guatemala, Guinea, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Ireland, Israel, Japan, Jordan, Kazakhstan, Kenya, Korea, Republic of Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lithuania, Luxembourg, Macedonia, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Moldova, Republic of Monaco, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Senegal, Serbia and Montenegro, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tanzania, United Republic of Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Zimbabwe (source: Martindale-Hubbell).