Enforcing Foreign Judgments In The U.S.
- A Practitioner’s Perspective

Presented by:
Devindra R. T. Kissoon
dkissoon@cozen.com
Objective: Judgment Enforcement

- Threshold issue: Can a foreign money judgment be enforced in the United States?
  - Yes
• Practice Pointer:

– The judgment enforcement process begins at the commencement of an action.

– GET HELP!!!!!! Consult with resident counsel prior to commencement of local proceedings to avoid common pitfalls.
Legal Framework In The United States

- The U.S. is not party to any international conventions or treaties requiring the recognition of foreign judgments.
- No constitutional basis requiring recognition.
- There is no governing federal legislation.
- The U.S. is receptive to foreign judgment recognition and enforcement.
The Beginning: *Hilton v. Guyot*

159 U.S. 113 (1895)

- The U.S. Supreme Court drew upon the principle of comity to fashion a general rule that foreign judgments should be enforced in U.S. courts absent a specific reason for non-enforcement.
Overriding Principles: Hilton In Practice

- Whether The Foreign Court Properly Accepted Personal Jurisdiction Over The Defendant.

Overriding Principles Continued

- Whether the proceedings were tainted with fraud.
- Whether the judgment offends the public policy of the local state.
Governing Law

• State Law Applies:
  – a party seeking to enforce judgment in the U.S. must file suit in a local court.
  – enforcement under state law.
  – that court will determine whether to give effect to the judgment.

• Federal courts will apply state law in diversity cases.
• **Practice Pointer**
  - Obtain an exemplified (authenticated or certified) copy of the foreign judgment with the seal of the issuing court affixed thereto
Uniform Foreign-Money Judgments Recognition Act ("UFMJRA")

- Not all states have implemented the UFMJRA.
- In New York, Article 53 of the New York Civil Practice Law and Rules governs foreign judgment enforcement.
- UFMJRA modeled from the common law requirements followed in Hilton v. Guyot provides uniform framework for enforcement of foreign judgments.
applies to money judgments only – excludes judgments for taxes, fines or other penalties, or for support in matrimonial or family matters.

- Does not apply to preliminary relief or interim orders – only to judgments that are “final and conclusive and enforceable where rendered.”

- A judgment may be treated as final “even though an appeal therefrom is pending or it is subject to appeal.” *Id. § 1 UFMJRA.*
Grounds For Non-Recognition
Under The UFMJRA

• Mandatory Grounds For Non Recognition:
  – the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process law;
  – the foreign court did not have personal jurisdiction over the defendant; or
  – the foreign court did not have personal jurisdiction over the subject matter.
Discretionary Grounds For Non-Recognition

- A judgment “need not be recognized” where:
  - The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
  - The judgment was obtained by fraud;
  - The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state;
  - The judgment conflicts with another final and conclusive judgment;
  - The parties had agreed to another form of settlement of the dispute, e.g., arbitration; or
  - In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
UFMJRA: Personal Jurisdiction

- A foreign judgment “shall not be refused recognition for lack of personal jurisdiction if:
  - Defendant was personally served in the foreign state.
  - Defendant appeared voluntarily in the foreign proceedings and consented to jurisdiction.
  - Defendant agreed to submit to jurisdiction of foreign court before the action was commenced.
UFMJRA: Personal Jurisdiction continued

- Defendant was incorporated or domiciled in the foreign state when the action was commenced.
- Defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising from that business location.
- Additionally, the courts of the enforcing state are free to recognize other bases of jurisdiction.
The UFMJRA was revised and updated in 2005 to clarify provisions and correct problems created by the interpretation of provisions by courts over the years.

- See
If all the prerequisites for enforcement are met, the non-U.S. court judgment will be converted to a state court judgment. Generally this is done either by commencing a new action in the state court or by a form of summary proceeding. See, e.g., N.Y. CPLR 3213 (motion for summary judgment in lieu of complaint). Only after the non-U.S. court judgment is domesticated and converted to a state court judgment does it become enforceable as a judgment.
Practical Considerations Pertinent To The Enforcement of Judgments In All Jurisdictions

- Proper notice;
- Subject matter and personal jurisdiction;
- Final and binding judgment; and
- No violation of “recognizing” country’s public policy.
Common Practitioner Pitfalls

- Non-compliance with local service requirements.
  - Practice Pointer: consult with local counsel and check applicable conventions e.g. Hague Convention

- Jurisdiction not properly obtained.
  - Practice Pointer: ensure jurisdiction properly obtained pursuant to local and foreign law.

- Foreign judgment may be unenforceable absent treaty.

- Public policy concerns.

- Reciprocity.
Overriding Principle

• DO NOT OFFEND LOCAL LAWS