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Judgments 'Made in China' But Enforceable in the United States?: Obtaining Recognition and Enforcement in the United States of Monetary Judgments Entered in China Against U.S. Companies Doing Business Abroad

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Abstract

This article provides a comprehensive discussion of the two uniform Model Acts that furnish the governing standards for the recognition and enforcement by U.S. courts of monetary judgments entered abroad. The Model Acts have been adopted by a majority of U.S. states, but because some states have not adopted them, this article also addresses the common law considerations applied in those non-adopting states in determining whether to recognize and enforce foreign monetary judgments. This article includes a discussion of U.S. case law interpreting the requirements and discretionary considerations identified under both the Model Acts and American common law, and addresses some of the procedures that a litigant must undertake in most U.S. jurisdictions in seeking to obtain recognition and enforcement of a foreign monetary judgment.

While the article addresses the factors that are considered by U.S. courts in giving recognition to a monetary judgment from any foreign court, its focus is on judgments entered in different regions of China, and the burden of proof necessary to obtain an American court's recognition and enforcement of a judgment entered in China against a U.S. company doing business abroad.

Finally, this article addresses the approach taken by some foreign countries in determining whether to recognize judgments entered in the United States, and explains how and why that standard differs from the standard applied by U.S. courts in giving recognition to foreign judgments.

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I. Introduction

Your new client, a Chinese business owner, has come to you for help in enforcing a monetary judgment entered by a court in China against a U.S. company that breached a contract, committed a tort, or otherwise engaged in illegal conduct abroad. The client wants to know the requirements and procedures for obtaining recognition and enforcement of the foreign judgment in the United States. How do you advise your client?

This article provides a roadmap to the governing laws and a discussion of each requirement and discretionary factor used by U.S. courts to evaluate whether to recognize and enforce a foreign monetary judgment, with a particular focus on the enforceability of Chinese judgments.

II. Overview of Framework for Obtaining Recognition and Enforcement of Foreign Money Judgments in the United States

A. LAW GENERALLY

Currently, the United States is not a party to any bilateral treaties or multilateral international conventions on the reciprocal recognition and enforcement of judgments. The principal reason for this absence is the perception of many foreign jurisdictions that U.S. monetary judgments are excessive according to foreign notions of liability.¹ In addition, foreign courts have objected to the breadth of extraterritorial jurisdiction asserted by courts in the United States.² Notwithstanding the absence of a treaty or convention providing for the reciprocal recognition and enforcement of foreign judgments, the United States is among the most liberal of nations in recognizing and enforcing the judgments of foreign courts.³ And while there is some difference of opinion on this point, there is also a general belief that current U.S. law on the recognition and enforcement of foreign judgments exhibits a relatively high degree of uniformity.⁴

In the absence of any controlling federal law, the recognition and enforcement of foreign judgments in the United States is governed by state law and the principles of comity, reciprocity, and *res judicata*.⁵ A party seeking to enforce a foreign judgment, decree, or order in the United States must generally file suit before a competent U.S. court, and the court will determine whether to give effect to the foreign judgment.⁶ Cases seeking rec-

1. See Panagiota Kelali, *Provisional Relief in Transnational Litigation in the Internet Era: What is in the U.S. Best Interest?*, 24 J. MARSHALL J. COMPUTER & INFO. L. 263, 291 (2006); Matthew H. Adler, *If We Build It, Will They Come?—The Need for a Multilateral Convention on the Recognition and Enforcement of Civil Monetary Judgments*, 26 GEO. J. INT'L L. 79, 93-94 (1994).

2. See Peter Trooboff, *Judgments Enforced*, 30 NAT'L L. J. 12 (2007); see also Adler, *supra* note 1, at 93-94.

3. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S. §§ 481-88, Introductory Note (1987); see also Melinda Luthin, *U.S. Enforcement of Foreign Money Judgments and the Need for Reform*, 14 U.C. DAVIS J. INT'L L. & POL'Y 111, 117 (2007).

4. See Matthew B. Berlin, *The Hague Convention on Choice of Court Agreements: Creating an International Framework for Recognizing Foreign Judgments*, 3 BYU INT'L L. & MGMT. REV. 43, 52-53 (2006); but see Luthin, *supra* note 3, at 120.

5. See Adler, *supra* note 1, at 84-85.

6. *Hennessy v. Marshall*, 682 S.W.2d 340, 343-44 (Tex. App. 1984) (default judgment rendered by English court would not be recognized until plenary suit was filed in the United States for recognition of the judgment and defendant was given opportunity to raise statutory defenses).

ognition and enforcement of foreign money judgments may be filed in either state or federal court. State substantive law applies with respect to the recognition and enforcement of foreign judgments, but diversity jurisdiction in federal court may be obtained as well.⁷

Two Model Acts drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association have provided states an opportunity to adopt a concise, uniform statutory framework for the recognition and enforcement of foreign judgments, rather than relying on piecemeal case law to define the governing standard. While one goal behind the drafting of these Model Acts is certainly to aid the states by providing a standardized, codified version of the case law on the principles of comity, the far-reaching goal is to encourage other countries to recognize and enforce U.S. judgments abroad by demonstrating the liberal and concrete standards by which foreign judgments will be evaluated for recognition in the United States.⁸

B. THE MODEL ACTS

The first Model Act, the Uniform Foreign Money-Judgments Recognition Act (UFM-JRA), 13 U.L.A. 149, originally promulgated in 1962, codifies the general common law principles of comity.⁹ It provides a set of uniform rules under which U.S. courts may evaluate monetary judgments from foreign courts to determine whether a judgment is conclusive and entitled to recognition. The application of the UFM-JRA is not limited to or exclusive of judgments from any particular countries.¹⁰ All foreign country judgments are treated the same and subject to the same tests under the Act. States are free to adopt the UFM-JRA, or to apply their own common law principles of comity in evaluating a petitioner's request for recognition of a foreign judgment. As of spring 2010, thirty-two U.S. states and territories had adopted the UFM-JRA.¹¹

In 2005, the National Conference of Commissioners issued a revised version of the UFM-JRA, the Uniform Foreign-Country Money Judgments Recognition Act, in an effort to clarify its predecessor's provisions that had caused some confusion in interpretation, and to provide additional guidance to the courts in states that had adopted the original UFM-JRA. Many states, however, had already become comfortable with the original version of the UFM-JRA and, to date, only a relatively small number of states have adopted the most recent version.¹²

7. See, e.g., *Van Den Biggelaar v. Wagner*, 978 F. Supp. 848, 853 (N.D. Ind. 1997).

8. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT REFS. & ANNOTS., 13 U.L.A. 149, Prefatory Note (1986) [hereinafter UFM-JRA]; see also Luthin, *supra* note 3, at 120-21.

9. UFM-JRA, 13 U.L.A. 149.

10. *Id.*

11. As of the writing of this article, states or U.S. territories having adopted some version of the UFM-JRA included: AL, CA, CO, CT, DE, D.C., FL, GA, HA, ID, IL, IA, ME, MD, MA, MI, MN, MO, MT, N.J., N.M., N.Y., N.C., N.D., OH, OK, OR, PA, TX, U.S. Virgin Islands, VA, and WA. See UFM-JRA, 13 U.L.A. 149.

12. California, Colorado, Hawaii, Idaho, Iowa, Michigan, Montana, New Mexico, Nevada, North Carolina, Oklahoma, Oregon, and Washington have adopted the 2005 version of the UFM-JRA, the Uniform Foreign-Country Money Judgments Recognition Act. See The National Conference of Commissioners on Uniform State Laws, *A Few Facts About the Uniform Foreign-Country Money Judgments Recognition Act*, http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ufcmjra.asp (last visited Oct. 3, 2009).

Under the UFM-JRA, a foreign judgment is subject to a limited scope inquiry prior to a court's determination about whether it is entitled to be recognized.¹³ A defendant challenging recognition of a foreign judgment may not retry issues of liability or damages, but rather is limited to due process-type defenses enumerated in the statute.¹⁴ The UFM-JRA applies the same basic elements as the common law, but divides foreign judgments into two basic categories: (1) foreign judgments that are not conclusive (*i.e.*, where denial of recognition is mandatory for failure to satisfy due process considerations); and (2) foreign judgments that need not be recognized at the discretion of the reviewing court for lack of sufficient notice, for fraud, where the decision is contrary to public policy or in conflict with another judgment, where the dispute was controlled by an alternative dispute resolution provision, or for *forum non conveniens* in cases where personal jurisdiction was based solely on personal service.¹⁵ Section 3 of the Act provides that a foreign judgment not falling into either of these two categories is conclusive between the parties, to the extent it grants or denies recovery of a sum of money.¹⁶

In states that have adopted the UFM-JRA, courts generally look first to the particular state statute adopting the Act to determine whether a foreign judgment is entitled to recognition.¹⁷ Nevertheless, even where a state court determines that a foreign judgment, or a portion thereof, is not entitled to recognition under the UFM-JRA, the Act expressly provides that such a conclusion does not preclude the court from recognizing it under the general principles of comity.¹⁸ Finally, the Act does not prescribe a uniform enforcement procedure, but instead provides that a foreign judgment entitled to recognition will be enforced in the same manner as a judgment from a sister state that is entitled to full faith and credit. Pursuant to the comment to Section 3, the method of enforcement will be that of the Uniform Enforcement of Foreign Judgments Act of 1948 (UEFJA) in states that have adopted that Act.¹⁹

13. See *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1409 (9th Cir. 1995).

14. *Id.*

15. See UFM-JRA, 13 U.L.A. 149 § 4.

16. *Id.* § 3 (foreign judgments not involving a decision with respect to a monetary claim or award are not covered by the UFM-JRA, and are generally not the subject of this article).

17. *But see* *Yu v. Zhang*, 885 N.E.2d 278, 284-85 (Ohio Ct. App. 2008) (in a state that had adopted UFM-JRA, the court nonetheless applied a less onerous common law test and gave recognition to a divorce and property division entered in China under general principles of comity, even though wife claimed she did not receive notice of proceedings in China and that her notarized signatures on agreements related to property division were forged). Other courts in UFM-JRA jurisdictions have also, on occasion, inexplicably reverted to the common law principles of comity in evaluating whether to give recognition to a foreign money judgment. Usually, however, UFM-JRA states will apply the statute in determining whether to recognize a foreign judgment.

18. UFM-JRA, 13 U.L.A. 149 § 7; *See also*, *Downs v. Yuen*, 298 A.D.2d 177 (N.Y. App. Div. 2002) (enforcing judgment entered in Hong Kong in divorce action awarding wife \$10 million, even though portion of award was for support, which is not enforceable under state statute on recognition of foreign money judgments, but was nonetheless enforceable under general principles of comity); *Siko Ventures v. Argyll Equities*, No. SA-05-CA-100-OG, 2005 WL 2233205 (W.D. Tex. Aug. 5, 2005) (judgment entered in Hong Kong holding plaintiff was entitled to specific performance of loan agreement provisions would not be denied recognition, despite not being a judgment for a specific amount of money as required by Texas' statute on the recognition of foreign judgments, as statute expressly authorized court to recognize foreign judgments not falling under the Act based on principles of comity).

19. UFM-JRA, 13 U.L.A. 149 § 3. The only U.S. states that have not adopted the UEFJA are Massachusetts and Vermont; Massachusetts has legislation pending to adopt it.

Thus, the UFM-JRA and the UEFJA work in tandem. The UFM-JRA provides a court with the means and guidelines for recognizing a foreign monetary judgment. The UEFJA, through its incorporation into the UFM-JRA, provides the manner of enforcement. Despite this deceptively simple appearance, and the intention of the UFM-JRA and the UEFJA to make the procedures for recognition and enforcement of foreign judgments clearer and more uniform, states have still differed to some extent in how they have interpreted potentially conflicting provisions of the two Acts regarding the mechanics of recognizing and enforcing foreign judgments. For example, while most states require a separate action to be filed to determine whether a foreign judgment is entitled to recognition, a few states proceed directly to the UEFJA requirement that a foreign judgment be registered with the domestic court, as is done with judgments from a sister state, and do not require a separate action to determine entitlement to recognition.²⁰ The practitioner is well-advised to review the requirements of the particular jurisdiction where recognition and enforcement are sought before proceeding.

C. COMMON LAW

In the twenty states that have not adopted the UFM-JRA, courts evaluate whether to give recognition to a foreign judgment using general common law principles of comity. A U.S. court will generally exercise its right to examine foreign judgments only on four limited grounds, in order to determine: (1) if the original court had jurisdiction; (2) whether the defendant received adequate notice of the proceedings; (3) if the proceedings should be vitiated for fraud; and (4) whether the proceedings were otherwise contrary to the public policy of the enforcing state.²¹ Absent a compelling basis for denying recognition and enforcement to a foreign judgment for failure to satisfy one of these four core requirements, most U.S. courts will recognize and enforce monetary judgments entered in foreign countries.²²

III. The Initial Statutory and Common Law Requirement for Recognition: A Final, Conclusive, and Enforceable Foreign Judgment

In all U.S. states, the first requirement for recognition is a valid foreign judgment. Section 2 of the UFM-JRA specifies that the Act 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."²³ A judgment is final if it resolves the underlying dispute in its entirety.²⁴ If finality is disputed, the court considers whether the judgment is final according to the laws of the foreign country where the judgment was entered.²⁵ If the judgment is facially final, the judgment debtor challenging finality bears the burden of

20. See, e.g., N.J. STAT. ANN. § 2A:49A-27 (2009).

21. Kwongyuen Hangkee Co. v. Starr Fireworks, Inc., 634 N.W.2d 95, 97 (S.D. 2001); see also *Van Den Biggelaar*, 978 F. Supp. at 848.

22. *Id.*

23. UFM-JRA, 13 U.L.A. 149 § 2.

24. *Rail Servs. of Am. v. State Comp. Ins. Fund*, 1 Cal. Rptr. 3d 700, 705-06 (2003).

25. See *Hernandez v. Seventh Day Adventist Corp.*, 54 S.W.3d 335, 337 (Tex. App. 2001).

demonstrating that it is not in fact final. If it is not facially final, however, the judgment creditor bears the burden of demonstrating that it is indeed final.²⁶

The comment to Section 2 states: “[w]here an appeal is pending or the defendant intends to appeal, the court of the enacting state has power to stay proceedings in accordance with Section 6 of the Act.”²⁷ Section 6 makes clear that a court may stay the proceedings until a pending appeal has been decided, or until the expiration of the time allowed to the defendant to pursue its appeal.²⁸ While the entry of a stay in proceedings to recognize a foreign judgment pending the outcome of an appeal of that same judgment seems to make sense, the court has discretion whether to enter such a stay, to require the posting of a bond, or to order other relief pending the outcome of the appeal.²⁹ In some cases, courts have not delayed in recognizing foreign judgments even when the judgment is on appeal where it was entered.³⁰

IV. Legal Requirements Under the UFM-JRA

A. MANDATORY CONDITIONS

Other than a final, conclusive foreign judgment, the three mandatory requirements for recognition of a foreign judgment are all due process-type considerations. The foreign court must have: (1) rendered its judgment under a system that provides impartial tribunals or procedures compatible with the requirements of due process; (2) had personal jurisdiction over the defendant; and (3) had subject matter jurisdiction over the controversy.³¹ Each of these requirements is discussed below.

1. *The Judicial System in the Foreign Nation Must Comport with Due Process*

A party opposing recognition of a foreign judgment on grounds that the judicial system where the judgment was entered did not comply with traditional notions of due process bears the burden of establishing a lack of due process in the system as a whole, not just in the particular case at issue.³² Notably, this defense can be waived if the defendant moved

26. *Id.* (finding judgment facially final and other defenses waived for failure to timely assert, and therefore recognizing judgment entered in Hong Kong against individual debtor).

27. UFM-JRA, 13 U.L.A. 149 § 2 cmt.

28. *Id.* § 6.

29. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 4(a), 13 U.L.A. 261 (1964) [hereinafter UEFJA] (“if the judgment debtor shows the [court] that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment by the state in which it was rendered”).

30. See, e.g., *S.C. Chimexim S.A. v. Velco Enters. Ltd.*, 36 F. Supp. 2d 206, 213 (S.D.N.Y. 1999) (based on testimony from three Romanian lawyers, court held that money judgment entered in Romania was final for purposes of enforcement in New York, even though appeal was pending in Romania).

31. UFM-JRA, 13 U.L.A. 149 § 4.

32. *Pablavi*, 58 F.3d at 1412 (foreign judgment not enforced against sister of Shah of Iran because she could not have received due process in Iranian court at the time of judgment); see also *Soc’y of Lloyd’s v. Reinhart*, 402 F.3d 982, 994-95 (10th Cir. 2005); *Soc’y of Lloyd’s v. Ashenden*, 233 F.3d 473, 476 (7th Cir. 2000). *But see* UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 4(c)(8), available at <http://www.law.upenn.edu/bl/archives/ulc/ufmjra/2005final.pdf> [hereinafter UFCMJRA] (providing that the court

to dismiss an action originally filed in the United States based on *forum non conveniens* and sought to transfer the action to the foreign jurisdiction.³³

Whether the judicial system in China comports with traditional notions of due process is a more complex question. In deciding *forum non conveniens* motions, U.S. courts have, on several occasions, evaluated Chinese courts to determine whether they provided an adequate alternative forum.³⁴ Certainly, the system in Hong Kong, which provides many procedural safeguards comparable to those in the United States, satisfies the requirements of due process.³⁵ Courts have also recognized decisions from Taiwan after concluding that its system of justice comports with traditional notions of due process.³⁶

The People's Republic of China (PRC), on the other hand, has its own separate and distinct judicial system from that of Hong Kong and Taiwan, which arguably did not comport with Western notions of due process until the last decade or two. Until very recently, there were no known decisions addressing the recognition of monetary judgments entered in the PRC.³⁷ Nonetheless, legal reform has been a priority in the PRC since the 1990s and has taken on several forms, with due process unquestionably being one of the focal points. Examples of legal reform in the PRC over the past two decades have taken multiple forms.

The first notable reform to the Chinese legal system was the 1982 adoption of the Constitution of the People's Republic of China, which has been amended four times since its adoption and has increasingly recognized the importance of human rights, due process, and an impartial legal system to PRC's continuing development.³⁸

need not recognize a foreign-country judgment if "the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law".

33. See *In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India*, 634 F. Supp. 842, 852 (S.D.N.Y. 1986).

34. See, e.g., *Guimei v. General Elec. Co.*, 172 Cal. App. 4th 689, 700-01 (Ct. App. 2009) (finding courts in Shanghai capable of adjudicating complex, multi-party product liability actions).

35. See, e.g., *Downs*, 298 A.D.2d at 178 (finding that there was ample evidence that the Hong Kong system of justice comported with due process both before and after the transfer of sovereignty to China, the court enforced a foreign judgment based on the UFM-JRA and general principles of comity).

36. See, e.g., *Chou v. Shieh*, No. G031589, 2004 WL 843708, at *7-8 (Cal. Ct. App. Apr. 20, 2004) (finding the alleged Taiwanese practice of providing notice to defendant by gluing notices of trial to the door of the defendant's residence, even if true, did not establish a fundamentally flawed system, but rather seemed reasonably calculated to give notice with at least the same degree of effectiveness as mailing the document to the same address, and that defendant's claim that trial had been held on a date earlier than that contained in the notice, may have, if true, reflected a flaw in this particular proceeding, but it did not demonstrate a system-wide problem).

37. While applying different standards, it should be noted, however, that U.S. courts addressing motions to dismiss actions filed on *forum non conveniens* grounds have, on occasion, granted the motions on the basis that the PRC provided a suitable alternative forum for the parties' dispute. See *Guimei*, 172 Cal. App. 4th at 691; *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007). See also *Shao v. Ma*, 861 N.E.2d 788 (Mass. App. Ct. 2007) (in remanding for a determination as to whether a Massachusetts probate court must defer to a Beijing court's decision on custody and visitation issues, the court noted that the probate court had failed to consider whether the procedural and substantive laws of China were comparable to those of the probate court, as required by Massachusetts statute).

38. See, e.g., XIAN FA (Const.), art. 13 (2004) (P.R.C.) (recognizing private property rights), available at http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372963.htm; XIAN FA (Const.), art. 33 (2004) (P.R.C.) (recognizing that all citizens of the PRC are equal before the law and declaring the State's respect for human rights). The Chinese Constitution was promulgated by the Announcement of the Nat'l People's Cong. on Dec. 4, 1982 and subsequently amended in 1988, 1993, 1999, and 2003.

The next significant reform was the Civil Procedure Law of the People's Republic of China, adopted in 1991, which became the fundamental law governing civil trials and proceedings.³⁹ Its stated aim is "to protect the exercise of the litigation rights of the parties, ensure that the people's courts ascertain facts, distinguish right from wrong, apply the law correctly, try civil cases promptly, affirm the rights and obligations in civil affairs, [and] impose sanctions for civil wrongs."⁴⁰ The PRC Civil Procedure Law provides, among other fundamental rights, that: (1) the parties to a civil lawsuit must have equal litigation rights; (2) the court must have personal jurisdiction over the defendant; (3) the parties have the right to have an attorney or agent represent them; (4) the defendant must receive notice of the proceedings; (5) the defendant must have the right to cross examine witnesses and present its own evidence and witnesses; and (6) the parties have the right to appeal a judgment of the trial court.⁴¹

In 1995, the Judges' Law of the People's Republic of China was promulgated, mandating that "judges [. . .] faithfully implement the Constitution and laws."⁴² The stated purpose of the Judges' Law is "to ensure that the people's courts independently exercise judicial authority according to law and that judges perform their functions and duties according to the law."⁴³ In an inquisitorial legal system, like that of the PRC, where judges have active roles in investigating claims and defenses, determining facts, applying the law, and issuing judgments, this statute is considered fundamental to ensuring a fair and impartial legal system.⁴⁴

In one of the most recent efforts toward legal reform, which was primarily driven by a desire to expand the due process rights of litigants, the Standing Committee of the National People's Congress adopted the first amendment to the 1991 PRC Civil Procedure Law in October 2007.⁴⁵ One of the purposes of the amendment was to clarify and broaden the grounds for obtaining a new trial.⁴⁶ Prior to the amendment, dissatisfied litigants found it very difficult, if not impossible, to obtain a new trial.⁴⁷ Furthermore, the procedures for conducting a new trial, even when granted, were not standardized from one region to another.⁴⁸ The amendment was designed to provide additional grounds and procedures for obtaining and conducting new trials while still keeping the existing grounds, thereby providing parties with greater certainty about their rights to obtain a new trial, and expanding the options for a dissatisfied litigant.⁴⁹ The new PRC Civil Procedure Law went into effect April 1, 2008.⁵⁰

39. Civil Procedure Law (adopted at the Fourth Session of the Seventh Nat'l People's Cong., Apr. 9, 1991, promulgated by Order No. 44 of the President of the People's Republic of China, Apr. 9, 1991) art. 2, available at <http://en.chinacourt.org/public/detail.php?id=2694> (P.R.C.).

40. *Id.*

41. *See id.* arts. 8, 22, 50, 64, 66, 77-78.

42. Judges Law (adopted by Standing Comm. Nat'l People's Cong., June 30, 2001, effective Jan. 1, 2002) art. 1, available at <http://en.chinacourt.org/public/detail.php?id=2692> (P.R.C.).

43. *Id.* art. 1.

44. *See, e.g.*, Civil Procedure Law, art. 64.

45. CCCL, *Perfection of Civil Retrial, Enforcement and Consistency Among Laws*, available at <http://www.civillaw.com.cn/english/article.asp?id=1328> (last visited Oct. 3, 2009).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

Consistent with all of these changes, which were intended to promote civil rights within the PRC's judicial system, a U.S. district court recently granted recognition to a PRC court's judgment for several million dollars against a U.S. company doing business abroad in a case thought to be the first of its kind.⁵¹ In *Hubei Gezhoubu Sanlian Indus. Co., Ltd. v. Robinson Helicopter Co., Inc.* (Robinson), the California-based defendant manufactured and sold a helicopter to one of the two China-based plaintiffs, who had in turn leased it to the other plaintiff for use in its commercial tourism business.⁵² The helicopter crashed six minutes into its first flight, killing all three passengers and leaving the pilot as the only survivor.⁵³ The two corporate plaintiffs first sued the helicopter manufacturer in California, where the defendant was domiciled.⁵⁴ But Robinson moved for a stay based on *forum non conveniens*, arguing the case should be brought in the PRC where the accident had occurred. The trial court granted Robinson's motion.⁵⁵

The plaintiffs subsequently re-filed their action in the PRC. Robinson was served with notice of the PRC action, but it neither appeared nor presented any defense.⁵⁶ At trial, the plaintiffs presented evidence in support of their claims for product defect and strict liability. In a lengthy opinion, which was anything but a rubber-stamp of the plaintiffs' demand for damages or an ordinary default judgment, the PRC court analyzed the evidence and awarded plaintiffs a portion of the damages they had sought for their business losses.⁵⁷

Following entry of the judgment in the PRC court, the plaintiffs brought an action in federal district court in California to enforce their judgment against Robinson. After an initial setback in district court, the Ninth Circuit reversed the lower court's decision and remanded the case to the district court, where the plaintiffs finally received recognition of their PRC judgment.⁵⁸ While the plaintiffs in *Robinson* were ultimately successful, it took fifteen years from the date of the injury to finally obtain recognition of their foreign judgment by a U.S. court. In fact, the case may not be over yet, as Robinson has indicated it intends to appeal the district court's decision recognizing the PRC judgment. Notwithstanding this fact, the *Robinson* case is a positive sign that U.S. courts may be less likely to refuse recognition of judgments from the PRC on grounds that the proceedings did not comport with traditional notions of due process.

2. *The Foreign Court Must Have Had Personal Jurisdiction Over the Defendant*

For a foreign judgment to be recognized by a U.S. court, the court entering the judgment must have had personal jurisdiction over the defendant.⁵⁹ A number of U.S. courts

51. *Hubei Gezhoubu Sanlian Indus. Co., Ltd. v. Robinson Helicopter Co., Inc.*, No. 2:06-CV-01798-FMC, 2009 WL 2190187, at *1 (C.D. Cal. July 22, 2009).

52. *Id.*

53. *Id.* at *2.

54. *Id.* at *1.

55. *Id.*

56. *Id.* at *2.

57. *Id.* at *3.

58. *Id.* at 3, 7.

59. UFM-JRA, 13 U.L.A. 149 § 4(a)(2).

have refused to enforce foreign judgments for failure to demonstrate that this basic due process consideration was afforded to the defendant in the foreign jurisdiction.⁶⁰

Section 5(a) of the UFM-JRA specifies six non-exclusive conditions, any of which will conclusively demonstrate that personal jurisdiction was satisfied:

- (1) the defendant was served personally in the foreign state;
- (2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
- (3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- (4) the defendant was domiciled in the foreign state when the proceedings were initiated, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
- (5) the defendant had a business office in the foreign state and the proceedings in the foreign state involved a cause of action/claim for relief arising out of business done by the defendant through that office in the foreign state; or
- (6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action/claim for relief arising out of such operation.⁶¹

Where none of these six conditions can be relied on as a basis for personal jurisdiction in the foreign state, courts will look at whether the foreign court's exercise of personal jurisdiction over the defendant comported with traditional notions of fair play and substantial justice, as those terms have been interpreted by U.S. courts.⁶²

If the defendant is a U.S. manufacturer that placed its products into the stream of commerce in the foreign country (e.g., as Robinson did with its helicopters in China), and the action arises as a result of an alleged product defect that caused injury in the foreign country, it is likely that a U.S. court would find that these conditions satisfied the "transacting business" prong of the minimum contacts analysis, so as to justify the foreign court's exercise of jurisdiction over the defendant. *Robinson* is the only known case addressing enforcement of a judgment entered against a U.S. manufacturer in China based on a product-defect claim.⁶³ In a product defect case filed in the United States against a

60. See, e.g., *Attorney Gen. of Can. v. Gorman*, 769 N.Y.S.2d 369 (N.Y. Civ. Ct. 2003) (creditor failed to show that Canadian court had personal jurisdiction over debtor as required by UFM-JRA for recognition and enforcement of foreign judgment); *Siedler v. Jacobson*, 383 N.Y.S.2d 833 (N.Y. App. Div. 1976) (defendant's solitary act of purchasing antique from plaintiff in Vienna could not serve as jurisdictional predicate to grant conclusive effect to default judgment sued upon).

61. UFM-JRA, 13 U.L.A. 149 § 5(a).

62. See, e.g., *Canadian Imperial Bank of Commerce v. Saxony Carpet Co.*, 899 F. Supp. 1248, 1253 (S.D.N.Y. 1995) (finding defendant had sufficient contacts with Canada to support Canadian court's exercise of personal jurisdiction, where contract was concluded in Quebec and cause of action arose in Quebec); *Nippon Emo-Trans. Co. v. Emo-Trans Inc.*, 744 F. Supp. 1215, 1230 (E.D.N.Y. 1990) (holding that Japanese judgment could be enforced under New York's version of the UFM-JRA where, even though the bases for jurisdiction articulated by the Japanese court were insufficient for jurisdiction under New York law, under the standards of due process and New York's long-arm statute, jurisdiction could properly have been asserted over the defendant in Japan).

63. *Hubei*, No. 2:06-CV-01798-FMC, 2009 WL 2190187, at *1.

Hong Kong corporation, however, the court noted that where the Hong Kong manufacturer sold its product to another corporation that distributed the product in the United States, the foreign manufacturer could be subject to personal jurisdiction in the U.S. state where the plaintiff was injured if the manufacturer could reasonably have foreseen that its product would be sold in the United States.⁶⁴ Thus, based on *Robinson* and *Alliance Clothing*, a U.S. manufacturer that distributes a defective product would presumptively be subject to personal jurisdiction in China if its product is knowingly marketed to and sold in China, and causes injury there.

In addition, while the test for enforcement of foreign arbitral awards is different from that for recognition of foreign money judgments, there have been at least two recent decisions by U.S. courts enforcing arbitral awards entered in China related to the sale of allegedly defective products.⁶⁵ In *China National Metal Prods. Import/Export Co. v. Apex Digital, Inc.* a U.S. company initiated arbitration against a Chinese company in Shanghai on a product defect claim.⁶⁶ Shortly thereafter, the Chinese manufacturer initiated arbitration against the U.S. company in Beijing for improperly withholding payment for all goods furnished: both those claimed to be defective and those not claimed to be defective.⁶⁷ The Beijing panel awarded a monetary judgment to the Chinese company, and the Ninth Circuit upheld the confirmation of that award in the U.S. court.⁶⁸ Similarly, in *China Three Gorges Project Corp. v. Rotec Industries, Inc.*, a Chinese business purchased allegedly defective cranes from a Delaware corporation, and the cranes subsequently caused death or injury to several people in China.⁶⁹ The Chinese company pursued arbitration in China, and following an award in its favor, successfully sought confirmation of the arbitrator's award in an appropriate U.S. court.⁷⁰ Thus, not only is a U.S. court likely to find a foreign court had personal jurisdiction over a U.S. manufacturer when the manufacturer knowingly sold defective products abroad and such products caused injury there, but U.S. courts are also experienced in confirming foreign arbitration and judicial awards against U.S. manufacturers in favor of foreign plaintiffs, including awards rendered in China.

3. *The Foreign Court Must Have Had Subject Matter Jurisdiction Over the Controversy*

The foreign court must also have had subject matter jurisdiction over the controversy for the judgment to be recognized in the United States.⁷¹ Few cases have been identified challenging the foreign court's subject matter jurisdiction over the dispute. In those rare cases, however, the defense has generally been summarily rejected.⁷²

64. *Alliance Clothing Ltd. v. District Ct. for Denver*, 532 P.2d 351, 354 (Colo. 1975) (en banc).

65. See *CBS Corp. v. WAK Orient Power & Light Ltd.*, 168 F. Supp. 2d 403, 410 (E.D. Pa. 2001) (listing seven exceptions to confirmation under Convention on Recognition and Enforcement of Foreign Arbitral Awards).

66. *China Nat'l Metal Products v. Apex Digital, Inc.*, 379 F.3d 796, 798 (9th Cir. 2004).

67. *Id.*

68. *Id.* at 802.

69. *China Three Gorges Project Corp. v. Rotec Indus., Inc.*, No. Civ. A. 04-1510 JJJ, 2005 WL 1813025, at *1 (D. Del. Aug. 2, 2005).

70. *Id.* at *2.

71. UFM-JRA, 13 U.L.A. 149 § 4(a)(3).

72. See, e.g., *Genujo Lok Beteiligungs GmbH v. Zorn*, 2008 ME 50, 943 A.2d 573, 580 (finding judgment debtor impliedly consented to jurisdiction of German courts in forum selection clause of agreement).

B. DISCRETIONARY CONDITIONS FOR RECOGNITION OF FOREIGN JUDGMENTS
UNDER THE UFM-JRA

1. *The Defendant Received Sufficient Notice of the Proceedings*

It goes without saying that a defendant should receive adequate notice of the proceedings in the foreign court to allow him or her sufficient time to prepare and present a defense.⁷³ What is considered adequate notice, however, has been subject to interpretation. Interestingly, a handful of the cases declining to recognize a foreign judgment for failure to satisfy the notice requirement did so based on a conclusion that the quality (*i.e.*, the effectiveness) of the notice was lacking, rather than the timing of the notice, as specifically referenced in the statute.⁷⁴ Conversely, in the only published case that could be found addressing the adequacy of the timing of the notice of the foreign proceeding, the court held that a U.S. defendant who received twenty-one days notice of a required response date in the foreign forum and failed to respond had received adequate notice, such that the foreign court's judgment was entitled to recognition in the United States.⁷⁵

Notably, the express language of the UFM-JRA does not require technically effective service for recognition of a foreign judgment, only an adequate quantity of notice. Section 4(b)(1) of the Act reads: "A foreign judgment need not be recognized if (1) The defendant in the proceedings in the foreign court did not receive *notice* of the proceedings *in sufficient time* to enable him to defend" (emphasis added).⁷⁶ Arguably, only an adequate number of days' notice, not service, is a factor to be considered in recognizing a foreign judgment, and even then, it is a discretionary factor, not a mandatory one.

The court considered both the quality and quantity of notice in the *Robinson* case. First, it found that the service of process had satisfied the requirements of Rule 4(d)(3) of the Federal Rules of Civil Procedure, where the process papers had been left with an administrative assistant to Robinson's general counsel, combined with the general counsel's actual receipt of the papers and a completed certificate of service from the U. S. Central Authority attesting that service had been made according to the laws of the United States and in compliance with article 5(a) of the Hague Convention.⁷⁷ The court also found the five weeks of notice that Robinson received to have been adequate based on People's Republic of China Civil Procedure Law, which required that a foreign defendant receive at least thirty days notice to submit a defense.⁷⁸

73. UFM-JRA, 13 U.L.A. 149 § 4(b)(1).

74. *See, e.g., In re Marriage of Seewald*, 22 P.3d 580, 584-85 (Colo. Ct. App. 2001) (court declined to recognize foreign judgment because the wife did not receive "adequate notice" of the foreign proceedings in that there was a lack of demonstrable evidence that the wife had been personally served). *See also Isack v. Isack*, 733 N.W.2d 85, 88 n.3 (Mich. Ct. App. 2007) (declining to enforce foreign judgment because wife did not receive notice of the motion for summary disposition that resulted in the final judgment, although she had notice of the foreign proceedings generally).

75. *Bank of Montreal v. Kough*, 430 F. Supp. 1243, 1248 (N.D. Cal. 1977).

76. UFM-JRA, 13 U.L.A. 149 § 4(b)(1).

77. *Hubei*, No. 2:06-CV-01798-FMC, 2009 WL 2190187, at *4.

78. *Id.* at *6.

2. *The Judgment Was Not Obtained by Fraud*

Because the UFM-JRA does not explain what types of fraud might preclude recognition of a foreign judgment in the United States, courts are left to their own interpretation on this issue.⁷⁹ Several courts have held that the fraud must relate to matters other than those that could have been litigated, and must be fraud on the court.⁸⁰ Some courts have referred to this as extrinsic fraud.⁸¹ In contrast, intrinsic fraud relates to issues that were litigated in the prior proceeding, and alleged fraud of that variety generally would not prevent recognition of a foreign judgment.⁸²

3. *The Judgment Is Not Repugnant to the Enforcing Court's Public Policy*

U.S. courts may also refuse to enforce a foreign judgment because the claim or cause of action on which the judgment is based is repugnant to the public policy of the jurisdiction where enforcement is sought.⁸³ It is generally not considered grounds for non-recognition, however, that the foreign court's award of damages is inconsistent with state or federal law on the appropriate scope of damage awards.⁸⁴

4. *The Judgment Is Not in Conflict with Another Final and Conclusive Judgment*

The defense that a foreign judgment should be denied recognition because it conflicts with another final and conclusive judgment is infrequently raised, but does come up on occasion. In a case brought under New York law, a woman sued her former husband for enforcement of a judgment entered in another country relating to the ex-husband's breaches of a separation agreement.⁸⁵ The ex-husband moved for summary judgment on

79. Note that in the 2005 version of the Uniform Foreign-Country Money Judgments Recognition Act, the authors have attempted to clarify the type of fraud that must be shown to invoke the defense. The new provision provides that the foreign judgment need not be recognized if "the foreign country judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case." UFM-JRA, 13 U.L.A. 149 § 4(c)(2).

80. See, e.g., *Soc'y of Lloyd's v. Hamilton*, 501 F. Supp. 2d 248, 252-53 (D. Mass. 2007) (recognizing foreign judgment based on finding that defendant's claim that he was fraudulently induced to become an investor in English insurance market not only should have been raised, but was raised in the underlying proceedings in England where it was rejected, and furthermore that the alleged fraud was not fraud upon the court).

81. See, e.g., *Mata v. Am. Life Ins. Co.*, 771 F. Supp. 1375, 1388-89 (D. Del. 1991) (holding that the plaintiff widow's failure to disclose the fact that she had signed a waiver of claims under a whole life insurance policy constituted fraud extrinsic to the original proceedings in Bolivia, thereby precluding recognition of the Bolivian judgment in the United States).

82. *Id.* (internal cites omitted).

83. See, e.g., *Telnikoff v. Matusevitch*, 702 A.2d 230, 249 (Md. 1997) (British libel judgment could not be enforced in United States because contrary to U.S. public policy in favor of freedom of speech).

84. See *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 708 (Tex. Ct. App. 1998) (court could not refuse to recognize judgment entered in Canada on grounds that Canadian court's calculation and award of damages in patent infringement case was improper and excessive, and therefore violated Texas' public policy); *McCord v. Jet Spray Int'l Corp.*, 874 F. Supp. 436, 439 (D. Mass. 1994) (Belgian judgment that awarded damages to employee based on breach of at-will employment contract not recognized under Massachusetts law was nonetheless not repugnant to state's public policy); *Ackermann v. Levine*, 788 F.2d 830 (2d Cir. 1986) (enforcement of foreign default judgment that included attorneys' fees was not against public policy, even though inconsistent with U.S. court's law on recoverability of attorneys' fees).

85. *Ackerman v. Ackerman*, 517 F. Supp. 614, 615 (S.D.N.Y. 1981).

grounds that recognition of the other country's judgment was barred by a dismissal with prejudice of a prior suit that the ex-wife had brought in another state for alleged breaches of the separation agreement.⁸⁶ In rejecting the ex-husband's motion and ruling for the ex-wife, the court held that the dismissal of the prior state action with prejudice would likely not be entitled to full faith and credit in New York because it was entered based upon unauthorized actions of the ex-wife's attorney and the court clerk.⁸⁷ The court further held that the New York rule of enforcing the last-in-time of conflicting judgments, as well as general principles of comity with respect to recognition of foreign judgments, warranted giving recognition to the foreign country judgment.⁸⁸

In a later case from New York, however, the court found grounds for rejecting the discretionary New York rule that the latter of two conflicting judgments should prevail.⁸⁹ These different approaches reflect the forum court's inclination to turn to the equities of the case and to try to justify giving recognition to the judgment that it believes to be more fair and in keeping with the public policies of the forum state when faced with conflicting final and conclusive judgments.

5. *The Judgment Is Not Inconsistent with an ADR Agreement Between the Parties*

As with all of the defenses in Section 4(b) of the UFM-JRA, the existence of an alternative dispute resolution agreement between the parties, even if proven, provides a discretionary, not a mandatory basis for refusing to recognize a foreign court's judgment.⁹⁰ Courts that have addressed whether a foreign judgment should be recognized when it was contrary to an agreement by the parties to arbitrate the dispute have reached differing decisions. In one instance, the court held that the foreign court's decision that the defendant had waived its right to arbitrate was contrary to the state's strong public policy favoring resolution of claims through arbitration; therefore, the U.S. court declined to recognize the judgment.⁹¹ In another case, the court found that the defendant had both explicitly and implicitly waived the right to arbitrate, and that the enforceability of the default judgment entered against the defendant by the Israeli court was not subject to arbitration under the parties' arbitration clause.⁹² In sum, courts tend to evaluate the enforceability of ADR clauses, asserted as a defense to the recognition of a foreign judgment, much as they would if the action had originated in a U.S. court.

86. *Id.* at 616.

87. *Id.* at 623.

88. *Id.*

89. *Byblos Bank Europe, S.A. v. Sekerbank Türk Anonym Syrketti*, 885 N.E.2d 191, 194 (N.Y. 2008) (court denied recognition to a Belgian judgment that conflicted with a previously rendered Turkish judgment, and a German judgment granting the Turkish judgment reciprocity, because of the Belgian court's intentional disregard for the principles of comity in re-trying issues between parties that had already been adjudicated elsewhere).

90. UFM-JRA, 13 U.L.A. 149 § 4(b)(5).

91. *Nicor Int'l Corp. v. El Paso Corp.*, 318 F. Supp. 2d 1160, 1167 (S.D. Fla. 2004). *See also* *Courage Co. v. Chemshare Corp.*, 93 S.W.3d 323, 336 (Tex. App. 2002) (finding foreign judgment not entitled to be recognized on grounds that parties had agreed to arbitrate their disputes).

92. *Menorah Ins. Co. . Ltd. v. INX Reinsurance Corp.*, 72 F.3d 218, 221 (1st Cir. 1995).

6. *Where Jurisdiction Is Based on Personal Service Alone, the Foreign Tribunal Was Not a Seriously Inconvenient Forum*

Section 4(b)(6) of the UFM-JRA provides that a court may deny recognition to a foreign judgment where personal jurisdiction in the foreign forum was based solely on personal service, and the foreign tribunal was a seriously inconvenient forum for the defendant.⁹³ In virtually every case where this defense has been raised, the court has rejected the defense finding that personal jurisdiction was not based solely on personal service.⁹⁴ Thus, courts will seemingly go out of their way to find some alternative basis to support a finding of personal jurisdiction in the foreign forum, thereby providing grounds for rejecting a *forum non conveniens* argument under this section of the UFM-JRA.

7. *Does the Foreign Court Reciprocally Recognize Judgments From the United States?*

While not an acknowledged basis for denying recognition to a foreign judgment under the UFM-JRA, the issue of reciprocity merits a short discussion. A few states that have adopted the UFM-JRA have written in reciprocity as a discretionary factor to be considered in determining whether to recognize a foreign judgment. Georgia alone has incorporated reciprocity as a mandatory condition for granting recognition.⁹⁵ Georgia's incorporation is contrary to the overall trend in the United States, however, which is to move away from requiring reciprocity as a condition to recognizing a foreign court's judgments.⁹⁶

In a number of other civil law countries, however, conclusive enforceability of foreign money judgments is dependent upon reciprocity. Judgments rendered in the United States have, in many instances, been refused recognition abroad, either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved, or because the U.S. jurisdiction involved would not give a certification of reciprocity in countries where the existence of reciprocity must be certified to the courts of the government.⁹⁷ One of the goals of the authors of the UFM-JRA is that a state's codification of its rules on the recognition of foreign money judgments will make it more likely that judgments rendered in the state will be recognized abroad.

93. UFM-JRA, 13 U.L.A. 149 § 4(b)(6).

94. See, e.g., *Ingersoll Milling Mach. Co. v. Granger*, 833 F.2d 680, 689 (7th Cir. 1987) (jurisdiction based in part on defendant's contacts with Belgium); *Colonial Bank v. Worms*, 550 F. Supp. 55, 59 (S.D.N.Y. 1982) (jurisdiction based in part on defendant's prior agreement to submit to the jurisdiction of the English court).

95. GA. CODE ANN. § 9-12-114(10) (1982).

96. 30 AM. JUR.2d *Executions and Enforcement of Judgment* § 726. See also *Tonga Air Servs., Ltd. v. Fowler*, 826 P.2d 204, 209 (Wash. 1992) ("[r]eciprocity of recognition and enforcement is generally not required for enforcement of foreign money judgments in the U.S."). Note that this is a departure from the historic U.S. Supreme Court decision which made reciprocity a determinative factor by stating that a judgment rendered by a court of a foreign country should not be given conclusive effect when, by the laws of that country, judgments of the courts of the United States are reviewable on their merits. *Hilton v. Guyot*, 159 U.S. 113 (1895). The reciprocity requirement is generally accepted to no longer be an element of the federal law on enforcement of foreign judgments, but a few states still require it. See, e.g., *McCord*, 874 F. Supp. at 437.

97. See Peter Trooboff, *Judgments Enforced*, 30 NAT'L L. J. 12 (2007).

V. Legal Requirements Under Common Law

In applying the common law principles of comity to a request for recognition of a foreign judgment, courts frequently follow the requirements set forth in *Hilton v. Guyot*.⁹⁸ *Hilton* held that courts should:

recognize the judgments of foreign courts if (1) the foreign court had personal and subject matter jurisdiction; (2) the defendant in the foreign action had adequate notice and an opportunity to be heard; (3) the judgment was not obtained by fraud; and (4) enforcement will not contravene the public policy of the enforcing state.⁹⁹

Some courts have recognized an expanded list of requirements under *Hilton*. For example, *Van Den Biggelaar v. Wagner* applies a six-part test in reliance on *Hilton*: (1) did the foreign court provide an opportunity for a fair trial; (2) was the trial before a court of competent jurisdiction; (3) was there adequate notice or did the defendant appear voluntarily; (4) was the trial conducted upon regular proceedings; (5) was the trial held under a system of jurisprudence that provides for the impartial administration of justice; and (6) was there no evidence of fraud or prejudice in the system or by the court.¹⁰⁰ Other courts have boiled these factors down to the four requirements cited in the preceding paragraph, or some close variation thereof.¹⁰¹ Analysis of these due process-type considerations proceeds much the same in courts applying a common law test as it does in courts applying the state's version of the UFM-JRA.

VI. Cases Involving Efforts to Obtain Recognition in the United States of Judgments Entered in China

Apart from judgments dealing with divorce and custodial issues, only a small number of published cases have been identified involving attempts to enforce monetary judgments entered in China in U.S. courts.¹⁰²

Perhaps the earliest attempt to enforce a judgment entered in China was in *Boyle v. Semenoff*.¹⁰³ That action involved a claim by a trustee in bankruptcy for a foreign trading company against a military officer and alleged debtor, seeking an arrest order against the defendant based on a judgment for conversion entered in China.¹⁰⁴ The New York court found the judgment was not entitled to recognition based on a number of factors, including the plaintiff's failure to present the foreign judgment, the absence of evidence of the foreign court's jurisdiction over the defendant or over the subject matter, the lack of evidence that the procedures in the forum court were such that they should be accorded

98. See, e.g., *Phillips USA, Inc. v. Allflex USA, Inc.*, 150 F.R.D. 198, 201 (D. Kan. 1993).

99. *Id.* (quoting *S.C. Nat. Bank v. Westpac Banking Corp.*, 678 F. Supp. 596, 598 (D.S.C. 1987)).

100. *Van Den Biggelaar*, 978 F. Supp. at 858.

101. See, e.g., *Kwongyuen*, 634 N.W.2d at 97.

102. An additional case was identified, but was determined not to be relevant to this discussion, in that it involved a judgment entered in China against a Chinese foreign trade corporation, which the U.S. court refused to recognize or enforce based on lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act. See *Transatlantic Shiffahrtskontor GmbH v. Shanghai Foreign Trade Corp.*, 204 F.3d 384, 391 (2d Cir. 2000).

103. *Boyle v. Semenoff*, 201 A.D. 426 (N.Y. App. Div. 1922).

104. *Id.*

comity in the United States, and the lack of evidence that the defendant had notice of the action in China.¹⁰⁵ This case was decided well before the UFM-JRA was written, but nonetheless turns on many of the same due process considerations that comprise the law of comity today.

Nearly eighty years later, the issue arose again in *Kwongyuen Hangkee Co. v. Starr Fireworks, Inc.*¹⁰⁶ This case involved a fireworks company based in Hong Kong seeking to enforce a monetary judgment based on a delinquent account against a U.S. distributor of fireworks.¹⁰⁷ The judgment was entered in the High Court of Hong Kong.¹⁰⁸ The defendant had fully participated in the proceedings in Hong Kong, and had not appealed the decision either on the merits or on jurisdictional grounds.¹⁰⁹ The defendant also acknowledged that the judgment was not fraudulently obtained.¹¹⁰ In addition, the court noted that the system of law in Hong Kong provided for the impartial administration of justice, and enforcement of the judgment did not contravene any public policy.¹¹¹ As South Dakota is not one of the states that has adopted the UFM-JRA, the court relied on the common law doctrine of comity in recognizing and enforcing the foreign judgment.¹¹²

The same year that the Supreme Court of South Dakota decided *Starr Fireworks*, the Texas Court of Appeals decided *Hernandez v. Seventh Day Adventist Corp.*¹¹³ In that case, the court reversed a finding that a judgment from Hong Kong should be recognized based on the fact that the judgment creditor had failed to timely file an authenticated copy of the foreign judgment, as required under Texas' version of the UFM-JRA. The court found that authentication was a statutory prerequisite that had not been satisfied.¹¹⁴ The authentication requirement was a technicality peculiar to Texas' statute and the court's decision is not consistent with the generally more liberal approach of courts toward enforcing foreign judgments if due process considerations are met.

Finally, the recently-decided *Robinson* case stands alone as the only known case recognizing a monetary judgment entered against a U.S. defendant in a People's Republic of China court. This case involved a defendant that had stipulated to: (1) personal jurisdiction in an appropriate court in China, (2) tolling of the statute of limitations during the pendency of the first-filed state court action, and (3) abiding by any final judgment rendered in China as conditions of obtaining a stay of the state court action based on *forum non conveniens* grounds.¹¹⁵ Even then, it took the plaintiffs fifteen years from the date of injury to obtain recognition of their People's Republic of China judgment in a U.S. court. Thus, even where the U.S. defendant stipulates to jurisdiction in China, the substantive

105. *Id.* at 429.

106. *Kwongyuen*, 634 N.W.2d at 95.

107. *Id.*

108. *Id.* at 95-96.

109. *Id.* at 97.

110. *Id.*

111. The court noted that although Hong Kong had reverted to communist rule between the time the dispute had arisen and the time suit was filed, Hong Kong was still operating under the English system of law and there was every indication that the defendant had been given notice and an opportunity to present evidence in his defense. *Id.* at 98.

112. *Id.* at 96.

113. *Hernandez*, 54 S.W.3d at 335.

114. *Id.* at 338.

115. *Hubei*, No. 2:06-CV-01798-FMC, 2009 WL 2190187, at *1.

and procedural hurdles to obtaining recognition of a foreign judgment in the United States should not be underestimated.

Admittedly, these four cases present only a limited glimpse at a few situations where judgments entered in different regions of China have been granted or denied recognition in the United States. But, because the principles governing recognition of foreign judgments in the United States are uniform without regard to the nation where the judgment originated, one can look to authority under the UFM-JRA pertaining to recognition of judgments entered in any country for guidance of equal weight in assessing whether a judgment from China will be granted recognition and enforcement under any given set of facts.

VII. Procedures for Obtaining Recognition and Enforcement of Foreign Judgments

A. STEPS INVOLVED IN SEEKING RECOGNITION

As mentioned at the outset of this article, in most instances one must file suit before a competent U.S. court as the first step toward obtaining recognition of a foreign judgment. The pleading should state the name and address of the judgment creditor, and the name and last known address of the judgment debtor. It should set forth the general nature of the dispute and the particulars with respect to the name of the court and the date when the foreign judgment was entered, as well as the amount of the judgment. It should also attach an authenticated copy of the foreign judgment, along with a certified English translation of the judgment if the original is rendered in another language.

Once the defendant is served with the pleading, the case proceeds similarly to any other type of civil action. The defendant must file an answer within the number of days provided by the applicable rule of civil procedure. If the defendant disputes that the foreign judgment is entitled to recognition, it must assert one or more of the limited defenses to recognition of a foreign judgment in its responsive pleading.

Discovery is permitted as necessary to develop the plaintiff's entitlement to recognition of the foreign judgment and/or the defendant's entitlement to any asserted defenses. Because issues of liability and damages may not be retried, discovery is appropriately limited and the case is generally submitted to the court for ruling on one or more summary judgment motions. If there are disputed factual issues as to whether certain requirements for recognition were met, (*e.g.*, whether the defendant received adequate notice of the foreign proceedings), the court may hold a trial to hear evidence before issuing its decision. Because the scope of relevant issues is expressly limited in actions to enforce foreign judgments, these actions are generally resolved faster than actions seeking to impose liability in the first instance.

Once the court has determined that recognition of a foreign judgment is warranted, the court is required to ascertain the equivalent value in U.S. currency of the judgment entered in the foreign nation where it was originally entered as of the date of the judgment, and to render judgment for such value, along with court costs, and interest from the date

of the original judgment.¹¹⁶ Contemporaneous with recognition of a foreign judgment, the court should issue a domestic judgment in the amount of the foreign judgment for purposes of enforcing it.¹¹⁷

B. STEPS INVOLVED IN OBTAINING ENFORCEMENT

Once you have obtained recognition for your client's foreign judgment in the U.S. jurisdiction where the defendant resides, you now want to enforce the money judgment there. Providing that the debtor has assets in the jurisdiction where the judgment has been recognized, the judgment creditor has access to all the enforcement remedies of that jurisdiction as if the case had originated there. Section 3 of the UFM-JRA expressly provides that a recognized foreign judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.¹¹⁸

One temporary impediment to enforcement may exist if the foreign judgment is on appeal, or subject to appeal. If the judgment debtor can establish that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for the appeal expires, or the stay of execution expires or is vacated.¹¹⁹

VIII. Conclusion

The common law principles of comity, as codified in the UFM-JRA, generally control whether a foreign judgment will be recognized and entitled to enforcement in a U.S. court. While cases under the UFM-JRA abound, cases specifically addressing recognition of foreign judgments entered in China are still relatively few. Based on developments in the legal system in the People's Republic of China over the past two decades, it is increasingly likely that a U.S. court evaluating whether to recognize a judgment entered in China would conclude that the system of justice in China comports with traditional Western notions of due process, and thus that element would likely not to be a bar to recognition in a U.S. court. If the Chinese judgment otherwise meets the due-process type requirements of the UFM-JRA, there is nothing unique about judgments from China that should interfere with their recognition and enforcement in any U.S. court under the same analysis as a judgment entered in England, Canada, or anywhere else in the world.

116. See, e.g., *Renoir v. Redstar Corp.*, 20 Cal. Rptr. 2d 603 (Cal. Ct. App. 2004); *Farmer v. Orme*, 21 P.2d 977 (Cal. Ct. App. 1933).

117. *Renoir*, 20 Cal. Rptr. 2d at 607.

118. See *Electrolines, Inc. v. Prudential Assurance Co.*, 677 N.W.2d 874, 882-884 (Mich. Ct. App. 2003).

119. UEFJA, § 4.