

# STATE OF NEW YORK

523--A

Cal. No. 406

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to revising and clarifying the uniform foreign country money-judgments recognition act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The article heading of article 53 of the civil practice law  
2 and rules, as added by chapter 981 of the laws of 1970, is amended to  
3 read as follows:

4 RECOGNITION OF FOREIGN COUNTRY MONEY JUDGMENTS  
5 [~~SUMMARY OF ARTICLE~~]

6 § 2. Section 5301 of the civil practice law and rules, as added by  
7 chapter 981 of the laws of 1970, subdivision (a) as amended by chapter  
8 119 of the laws of 1979, is amended to read as follows:

9 § 5301. Definitions. As used in this article the following definitions  
10 shall be applicable.

11 (a) Foreign [~~state~~] country. "Foreign [~~state~~] country" [~~in this arti-~~  
12 ~~cle~~] means [~~any governmental unit~~] a government other than:

13 1. the United States[~~, or any~~];

14 2. a state, district, commonwealth, territory[~~,~~] or insular possession  
15 [~~thereof, or the Panama Canal Zone or the Trust Territory of the Pacific~~  
16 ~~Islands~~] of the United States; or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 3. any other government with regard to which the decision in this  
2 state as to whether to recognize a judgment of that government's courts  
3 is initially subject to determination under the Full Faith and Credit  
4 Clause of the United States Constitution.

5 (b) Foreign country judgment. "Foreign country judgment" [~~in this~~  
6 ~~article~~] means [~~any~~] a judgment of a court of a foreign [~~state granting~~  
7 ~~or denying recovery of a sum of money, other than a judgment for taxes,~~  
8 ~~a fine or other penalty, or a judgment for support in matrimonial or~~  
9 ~~family matters~~] country.

10 § 3. Section 5302 of the civil practice law and rules, as added by  
11 chapter 981 of the laws of 1970, is amended to read as follows:

12 § 5302. Applicability. [~~This article applies to any foreign country~~  
13 ~~judgment which is final, conclusive and enforceable where rendered even~~  
14 ~~though an appeal therefrom is pending or it is subject to appeal.] (a)  
15 Except as otherwise provided in subdivision (b) of this section, the  
16 provisions of this article apply to a foreign country judgment to the  
17 extent that such judgment:~~

18 1. grants or denies recovery of a sum of money; and  
19 2. under the law of the foreign country where rendered, is final,  
20 conclusive and enforceable even though an appeal therefrom is pending or  
21 it is subject to appeal.

22 (b) This article does not apply to a foreign country judgment, even if  
23 the judgment grants or denies recovery of a sum of money, to the extent  
24 the judgment is:

25 1. a judgment for taxes;  
26 2. a fine or penalty; or  
27 3. a judgment for divorce, support or maintenance, or other judgment  
28 rendered in connection with domestic relations.

29 (c) A party seeking recognition of a foreign country judgment has the  
30 burden of establishing that this article applies to the foreign country  
31 judgment.

32 § 4. Section 5303 of the civil practice law and rules, as added by  
33 chapter 981 of the laws of 1970, is amended to read as follows:

34 § 5303. Recognition [~~and~~] enforcement, and proceedings. (a) Except as  
35 is otherwise provided in section [~~5304~~] fifty-three hundred four of this  
36 article or any controlling law of the United States, a court of this  
37 state shall recognize a foreign country judgment [~~meeting the require-~~  
38 ~~ments of section 5302 is~~] to which this article applies as conclusive  
39 between the parties to the extent that it grants or denies recovery of a  
40 sum of money. [~~Such a foreign judgment is enforceable by an action on~~  
41 ~~the judgment, a motion for summary judgment in lieu of complaint, or in~~  
42 ~~a pending action by counterclaim, cross-claim or affirmative defense.]~~

43 (b) If recognition of a foreign country judgment is sought as an  
44 original matter, the issue of recognition shall be raised by filing an  
45 action on the judgment or a motion for summary judgment in lieu of  
46 complaint seeking recognition of the foreign country judgment.

47 (c) If recognition of a foreign country judgment is sought in a pend-  
48 ing action, the issue of recognition may be raised by counterclaim,  
49 cross-claim or affirmative defense.

50 (d) An action to recognize a foreign country judgment must be  
51 commenced within the earlier of the time during which the foreign coun-  
52 try judgment is effective in the foreign country or twenty years from  
53 the date that the foreign country judgment became effective in the  
54 foreign country.

55 § 5. Section 5304 of the civil practice law and rules, as amended by  
56 chapter 66 of the laws of 2008, is amended to read as follows:

1 § 5304. Grounds for non-recognition. (a) [~~No recognition.~~] A court of  
2 this state may not recognize a foreign country judgment [~~is not conclu-~~  
3 ~~sive~~] if:

4 1. the judgment was rendered under a judicial system [~~which~~] that does  
5 not provide impartial tribunals or procedures compatible with the  
6 requirements of due process of law;

7 2. the foreign court did not have personal jurisdiction over the  
8 defendant; or

9 3. the foreign court did not have jurisdiction over the subject  
10 matter.

11 (b) [~~Other grounds for non-recognition.~~] A [~~foreign country judgment~~]  
12 court of this state need not [~~be recognized~~] recognize a foreign country  
13 judgment if:

14 1. [~~the foreign court did not have jurisdiction over the subject~~  
15 ~~matter~~;

16 ~~2.~~] the defendant in the [~~proceedings~~] proceeding in the foreign court  
17 did not receive notice of the [~~proceedings~~] proceeding in sufficient  
18 time to enable [~~him~~] the defendant to defend;

19 [~~3.~~] 2. the judgment was obtained by fraud that deprived the losing  
20 party of an adequate opportunity to present its case;

21 [~~4.~~] 3. the judgment or the cause of action on which the judgment is  
22 based is repugnant to the public policy of this state or of the United  
23 States;

24 [~~5.~~] 4. the judgment conflicts with another final and conclusive judg-  
25 ment;

26 [~~6.~~] 5. the proceeding in the foreign court was contrary to an agree-  
27 ment between the parties under which the dispute in question was to be  
28 [~~settled~~] determined otherwise than by [~~proceedings~~] a proceeding in  
29 that court;

30 [~~7.~~] 6. in the case of jurisdiction based only on personal service,  
31 the foreign court was a seriously inconvenient forum for the trial of  
32 the action; [ex]

33 7. the judgment was rendered in circumstances that raise substantial  
34 doubt about the integrity of the rendering courts with respect to the  
35 judgment;

36 8. the specific proceeding in the foreign court leading to the judg-  
37 ment was not compatible with the requirements of due process of law; or

38 9. the cause of action resulted in a defamation judgment obtained in a  
39 jurisdiction outside the United States, unless the court before which  
40 the matter is brought sitting in this state first determines that the  
41 defamation law applied in the foreign court's adjudication provided at  
42 least as much protection for freedom of speech and press in that case as  
43 would be provided by both the United States and New York constitutions.

44 (c) A party resisting recognition of a foreign country judgment has  
45 the burden of establishing that a ground for non-recognition stated in  
46 subdivision (a) or (b) of this section exists; provided that the party  
47 seeking recognition shall bear the burden of establishing the adequate  
48 protections for freedom of speech and press required as a condition to  
49 recognition under paragraph nine of subdivision (b) of this section if  
50 the party resisting recognition establishes that the judgment is for  
51 defamation.

52 § 6. Section 5305 of the civil practice law and rules, as added by  
53 chapter 981 of the laws of 1970, is amended to read as follows:

54 § 5305. Personal jurisdiction. (a) [~~Bases of jurisdiction. The~~] A  
55 foreign country judgment [~~shall~~] may not be refused recognition for lack  
56 of personal jurisdiction if:

1 1. the defendant was served with process personally in the foreign  
2 [~~state~~] country;

3 2. the defendant voluntarily appeared in the [~~proceedings~~] proceeding,  
4 other than for the purpose of protecting property seized or threatened  
5 with seizure in the [~~proceedings~~] proceeding or of contesting the juris-  
6 diction of the court over [~~him~~] the defendant;

7 3. the defendant prior to the commencement of the [~~proceedings~~]  
8 proceeding had agreed to submit to the jurisdiction of the foreign court  
9 with respect to the subject matter involved;

10 4. the defendant was domiciled in the foreign [~~state~~] country when the  
11 [~~proceedings were~~] proceeding was instituted[, ~~]~~ or [~~], being a body corpo-~~  
12 rate] was a corporation or other form of business organization that had  
13 its principal place of business[, ~~], was incorporated,~~ in, or was organ-  
14 ized under the laws of, or had otherwise acquired corporate status, in  
15 the foreign [~~state~~] country;

16 5. the defendant had a business office in the foreign [~~state~~] country  
17 and the [~~proceedings~~] proceeding in the foreign court involved a cause  
18 of action arising out of business done by the defendant through that  
19 office in the foreign [~~state~~] country; or

20 6. the defendant operated a motor vehicle or airplane in the foreign  
21 [~~state~~] country and the [~~proceedings~~] proceeding involved a cause of  
22 action arising out of such operation.

23 (b) [~~Other bases of jurisdiction.~~] The courts of this state may recog-  
24 nize [~~other~~] bases of personal jurisdiction other than those listed in  
25 subdivision (a) of this section as sufficient to support a foreign coun-  
26 try judgment.

27 § 7. Section 5306 of the civil practice law and rules, as added by  
28 chapter 981 of the laws of 1970, is amended to read as follows:

29 § 5306. Stay [~~in case~~] of a proceeding pending appeal of a foreign  
30 country judgment. If [~~the defendant satisfies the court either~~] a party  
31 establishes that an appeal from a foreign country judgment is pending or  
32 [~~that he is entitled and intends to appeal from the foreign country~~  
33 judgment] will be taken, the court may stay [~~the proceedings~~] any  
34 proceeding with regard to the foreign country judgment until the appeal  
35 [~~has been determined or until the expiration of a period of time~~] is  
36 concluded, the time for appeal expires, or the appellant has had suffi-  
37 cient [~~to enable the defendant~~] time to prosecute the appeal and has  
38 failed to do so.

39 § 8. Section 5307 of the civil practice law and rules, as added by  
40 chapter 981 of the laws of 1970, is amended to read as follows:

41 § 5307. [~~Recognition in other situations.~~] Effect of recognition. (a)  
42 If the court, in a proceeding under section fifty-three hundred five of  
43 this article finds that the judgment is entitled to recognition under  
44 this article, then, to the extent that the foreign country judgment  
45 grants or denies recovery of a sum of money, the foreign country judg-  
46 ment is:

47 1. conclusive between the parties to the same extent as the judgment  
48 of a sister state entitled to full faith and credit in this state would  
49 be conclusive; and

50 2. enforceable in the same manner and to the same extent as a judgment  
51 rendered in this state.

52 (b) This article does not prevent the recognition of a foreign country  
53 judgment in situations not covered by this article.

54 § 9. Section 5309 of the civil practice law and rules, as added by  
55 chapter 981 of the laws of 1970, is amended to read as follows:

1 § [~~5309.~~] 5300. Citation. This article may be cited as the "Uniform  
2 Foreign Country [~~Money Judgments Recognition~~] Money Judgments Act."  
3 § 10. This act shall take effect immediately and shall apply to all  
4 actions commenced on or after the effective date of this act.