

Memorandum 2014-47

**Recognition of Tribal and Foreign Court Money Judgments
(Introduction of Study)**

In 2014, the Legislature enacted Senate Bill 406 (Evans).¹ The bill amends an existing Code of Civil Procedure section in California's enactment of the Uniform Foreign-Country Money Judgments Recognition Act and adds a new title to Part 3 of the Code of Civil Procedure (The Tribal Court Civil Money Judgment Act). In addition, the bill assigns the Commission² a new study:

SECTION 1. The California Law Revision Commission shall, within existing resources, conduct a study of the standards for recognition of a tribal court or a foreign court judgment, under the Tribal Court Civil Money Judgment Act (Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure) and the Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure). On or before January 1, 2017, the California Law Revision Commission shall report its findings, along with any recommendations for improvement of those standards, to the Legislature and the Governor.

This memorandum introduces the new study and provides general background information on the relevant laws. In addition, this memorandum discusses the scope of the study and proposes a general plan for proceeding with the study.

For ease of reference, this memorandum cites to Code of Civil Procedure provisions as they will read when Senate Bill 406 becomes operative on January

1. 2014 Cal. Stat. ch. 243. The full text of the chaptered bill will be attached as an exhibit to Memorandum 2014-41 (New Topics and Priorities).

2. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

1, 2015. Unless otherwise noted, all statutory citations in this memorandum are to the Code of Civil Procedure.

Further, the staff notes that, although Senate Bill 406 does not become effective or operative until January 1, 2015, the Commission can commence work on this topic immediately, under its general authority to study creditors' remedies.³

SCOPE OF STUDY

As an initial matter, the scope of this new study must be clearly described and understood. It is important to note that the Commission is, by law, only authorized to study topics that the Legislature has expressly referred to it by concurrent resolution or statute.⁴

In this instance, Senate Bill 406 authorizes the Commission to study:

the standards for recognition of a tribal court or a foreign court judgment, under the Tribal Court Civil Money Judgment Act (Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure) and the Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713) of Title 11 of Part 3 of the Code of Civil Procedure).⁵

As indicated, the study's scope is limited to the standards for recognition under specific laws, the Tribal Court Civil Money Judgment Act ("Tribal Act") and the Uniform Foreign-Country Money Judgments Recognition Act ("Uniform Act") (collectively, "Foreign Judgment Acts"). The scope of this study does not extend to standards of recognition for foreign judgments that are not governed by the Foreign Judgment Acts. Nor is the Commission is asked to make recommendations more generally on the Foreign Judgment Acts (i.e., aspects of these Acts unrelated to standards of recognition).

While focusing on "standards of recognition" is appropriate and consistent with the Legislature's assignment in Senate Bill 406, the staff notes that the Commission's resolution of authority provides general authority to study the law relating to creditors' remedies.⁶ If, in the course of the study, the Commission

3. See 2014 Cal. Stat. res. ch. 63 (SCR 83 (Monning)).

4. Gov't Code § 8293.

5. See 2014 Cal. Stat. ch. 243, § 1.

6. 2012 Cal. Stat. ch. 108 (ACR 98 (Wagner)).

uncovers other problems or errors in the Foreign Judgments Acts, the Commission’s general authority provides some flexibility to address them.

“Standards of Recognition”

While neither of the Foreign Judgment Acts uses the phrase “standards of recognition,” the chief concerns of the Legislature underlying this assignment to the Commission seem clear. The legislative history of Senate Bill 406 indicates that the substantive standards governing the recognition of judgments, as opposed to the procedures established in the bill, are intended to be the focus of the Commission’s work.⁷ More specifically, one concern motivating the assignment to the Commission is the question of whether the grounds for nonrecognition specified in the Foreign Judgment Acts are sufficient to ensure that fairness and adequate due process were provided in the underlying foreign or tribal action.⁸

Based on the language of Senate Bill 406 and the legislative history of the bill, the staff recommends that the Commission initially focus its attention on the provisions of the Foreign Judgment Acts that specify the substantive standards governing the recognition of foreign and tribal judgments. It seems clear that the “standards of recognition,” at a minimum, encompass the substantive grounds for (discretionary and mandatory) nonrecognition of a judgment under the Acts.⁹

BACKGROUND ON THE FOREIGN JUDGMENT ACTS

Prior to Senate Bill 406, the recognition of tribal court judgments was governed by the Uniform Act.¹⁰ Senate Bill 406 establishes the Tribal Act¹¹ to govern the process of recognizing and enforcing tribal court civil money

7. See Assembly Floor Analysis of SB 406 (August 6, 2014), p. 4 (“Even a cursory review of the grounds for discretionary nonrecognition raise legitimate questions as to the fairness and due process provided in the underlying action and what should the appropriate standard be for recognition in state court. Thus, this bill appropriately requires the California Law Revision Commission, by January 1, 2017, to conduct an in-depth evaluation of both the [Tribal Act] and the [Uniform Act] and the appropriate level of due process that should be required from foreign and tribal judgments.”).

8. See, e.g., *id.*

9. Code Civ. Proc. §§ 1716, 1737.

10. See Assembly Committee on Judiciary Analysis of SB 406 (June 13, 2014), p. 4, *citing* Report to the Judicial Council: Judicial Council-sponsored Legislation: Tribal Court Civil Judgment Act (Oct. 2012).

11. Codified in title 11.5 of part 3 of the Code of Civil Procedure.

judgments.¹² Senate Bill 406 was based on a proposal by the Judicial Council and was co-sponsored by the Judicial Council and the Blue Lake Rancheria tribe.¹³

As discussed above, SB 406 authorizes the Commission to study “standards of recognition” for tribal and foreign court civil money judgments under the Foreign Judgment Acts. SB 406 requires the Commission to report its findings and recommendations to the Governor and Legislature on or before January 1, 2017. By its own terms, the Tribal Act sunsets January 1, 2018, unless a later enacted statute deletes or extends that date.¹⁴ The Legislature chose these dates to ensure that the Commission’s work would be complete in time for the Legislature to consider it and act, if necessary, prior to the 2018 sunset date of the Tribal Act.¹⁵

As the titles of the Foreign Judgment Acts suggest, the Tribal Act governs judgments of a “tribal court,” while the Uniform Act governs judgments of the court of a “foreign country.”¹⁶

Tribal Act

According to the author, the purpose of the Tribal Act is to:

establish ... a new legal framework for seeking enforcement of tribal court money judgments under procedures that are modeled upon the simpler procedures applicable to judgments from the courts of other states, while still applying the principles of comity currently required for judgments from sovereign nations. **The framework would not alter the legal standards that state courts apply in recognizing and enforcing tribal court money judgments, but merely clarify and consolidate the procedures for doing so into a uniform and streamlined statutory scheme.**¹⁷

As indicated, the Tribal Act includes a number of procedural provisions, for example provisions specifying the information that must be provided to the

12. See Assembly Judiciary Analysis, *supra* note 10, at 1.

13. See *id.* at 1.

14. Code Civ. Proc. § 1742.

15. See Assembly Judiciary Analysis, *supra* note 10, at 8.

16. Compare Code Civ. Proc. § 1732(f), (g) (specifically, a tribal court is defined as “any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.”) with *id.* § 1714 (a foreign country is defined as any government other than the United States; a state, district, commonwealth, territory, or insular possession of the United States; or any other government with regard to which the decision in this state as to whether to recognize a judgment of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.).

17. Assembly Judiciary Analysis, *supra* note 10, at 5 (emphasis added).

court when filing for recognition of a judgment.¹⁸ Generally, as explained previously in this memorandum, these process-related provisions do not appear to be relevant to the Commission’s task of reviewing the “standards of recognition” under the Act. Therefore, the staff does not intend to analyze these process-related provisions in the study, except to the extent that they may be closely connected to the substantive standards of recognition.

Regarding the substantive standards for recognition, the Tribal Act was not intended to alter the standards, as set forth in the Uniform Act, for recognition of a tribal court judgment. The Tribal Act does, however, restate many of the relevant provisions (e.g., the grounds for mandatory and discretionary nonrecognition of judgments) from the Uniform Act, rather than incorporating them by reference.¹⁹

For now it suffices to note that the legal standards for recognition of tribal court and other foreign court judgments under the Foreign Judgment Acts are intended to be the same. As the study proceeds, future memoranda will, to the extent that it is relevant, discuss differences in the language of the Uniform Act and Tribal Act.

This memorandum provides a high-level summary of the main provisions in the Uniform Act that establish the scope of the Act and the rules for recognition of judgments that fall within the Act’s scope.

Uniform Act

The Uniform Foreign-Country Money Judgments Recognition Act was completed by the Uniform Law Commissioners in 2005.²⁰ Since then, 20 jurisdictions (including California) have enacted this uniform legislation.²¹

The 2005 uniform act is a revision of the 1962 Uniform Foreign Money-Judgments Recognition Act.²² California had previously enacted the 1962 uniform act,²³ and enacted the 2005 uniform act in 2007.²⁴

18. Code Civ. Proc. §§ 1733-1736; 1737(a), (d); 1738-1740. For example, these provisions include the required information to be included in an application for recognition and entry of judgment (§ 1734), service requirements (§ 1735), and an authorization for the superior court to communicate with the tribal court (§ 1740).

19. See, e.g., Code Civ. Proc. § 1737.

20. See <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Foreign-Country%20Money%20Judgments%20Recognition%20Act>.

21. *Id.*

22. See Unif. Foreign-Country Money Judgments Recognition Act, Prefatory Note, 13 II U.L.A. 21 (Supp. 2014).

It is worth noting that most of the grounds for nonrecognition in the 2005 act were derived from the 1962 uniform act.²⁵ As the study proceeds, the staff will, where relevant, review the materials related to the 1962 act to explain the origin and classification of relevant provisions in the 2005 uniform act.

Recognition of Judgments Under the Uniform Act

Fundamentally, the Uniform Act defines a relatively broad set of foreign judgments governed by the Act and presumes recognition of such judgments, subject only to specified mandatory and discretionary exceptions to recognition.²⁶

It is worth noting that foreign judgments that are not governed by the Act could still be recognized under other applicable laws or common law principles.²⁷

Judgments Governed by the Uniform Act

The Uniform Act only applies to a money judgment, specifically a judgment that “[g]rants or denies recovery of a sum of money.”²⁸ However, the Act does not apply to *all* money judgments. Specifically, the Act does not apply to judgments for taxes, fines, and penalties.²⁹ Nor does the Act apply to any “judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.”³⁰

The Uniform Act limits its applicability to judgments that are “final, conclusive, and enforceable.”³¹ The Act, however, does not require the time for appeal of the judgment to have expired before the judgment can be recognized.³²

23. See Unif. Foreign Money-Judgments Recognition Act, Table of Jurisdictions Wherein Act Has Been Adopted, 13 II U.L.A. 39 (2002).

24. See Unif. Foreign-Country Money Judgments Recognition Act, Table of Jurisdictions Wherein Act Has Been Adopted, 13 II U.L.A. 19 (Supp. 2014).

25. See Unif. Foreign-Country Money Judgments Recognition Act, Prefatory Note, 13 II U.L.A. 21 (Supp. 2014).

26. Code Civ. Proc. § 1716(a).

27. Code Civ. Proc. § 1723.

28. Code Civ. Proc. § 1715(a)(1).

29. Code Civ. Proc. § 1715(b).

30. Code Civ. Proc. § 1715(b)(3)(A).

31. Code Civ. Proc. § 1715(a)(2).

32. See Code Civ. Proc. § 1720.

Presumptive Recognition and Exceptions

As noted above, the Uniform Act presumes recognition for judgments that are governed by the Act, subject only to specified mandatory and discretionary grounds for non-recognition. Both the general presumption and the exclusive grounds for defeating the presumption are codified in Code of Civil Procedure Section 1716, reproduced below. Subdivision (a) states the general presumption, subdivision (b) includes the mandatory grounds for non-recognition, subdivision (c) includes the discretionary grounds for non-recognition, and subdivision (d) establishes the evidentiary burdens for recognition.

1716. (a) Except as otherwise provided in subdivisions (b) and (c), a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(1) The judgment was rendered under a judicial system that 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.

(c) A court of this state is not required to recognize a foreign-country judgment if any of the following apply:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.

(4) The judgment conflicts with another final and conclusive judgment.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(9) The judgment includes recovery for a claim of defamation unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.

(d) If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition of the foreign-country judgment pursuant to subdivision (c) of Section 1715, a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b) or (c) exists.³³

For the purpose of this study, the mandatory and discretionary grounds for nonrecognition listed in subdivisions (b) and (c) above appear to fit squarely within the class of substantive “standards of recognition” for the purposes of this study.

NEXT STEPS

In the next memorandum, the staff proposes to take a broad look at the general legal principles that govern recognition of foreign judgments. This broad look is intended to provide general background that will inform the Commission’s review of the Foreign Judgment Acts.

After setting forth the legal background, the staff proposes to examine the enactments of the Uniform Foreign-Country Money Judgments Recognition Act in other jurisdictions. The staff’s review of these other enactments would focus on identifying any significant non-uniform standards of recognition.

Once that review is complete, the staff proposes to analyze each of the grounds for nonrecognition (mandatory and discretionary) in the Foreign Judgment Acts.

Respectfully submitted,

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33. California’s enactment on this provision contains one non-uniform addition, paragraph (9) of subdivision (c). Otherwise, California’s enactment is substantively uniform.