

INTRODUCTION

Enforcement of Money Judgments

This work was originally published, under the editorship of Philip R. Weems, in 1987. Its purpose was, and continues to be, to serve as an aide to lawyers involved in transnational business matters, both in planning transactions and in formulating strategy for the prosecution or defense of claims crossing national borders. A primary objective of the book has always been to provide current and reliable sources of information on the enforcement of money judgments in various countries around the world. It has also been its intention that this information be provided by experienced international law firms from the countries whose laws are discussed and to convey the information by means of a uniform format, to permit easier comparison among jurisdictions.

Obviously, the objective of plaintiffs and their counsel in commercial litigation is to reduce their claims to cash. When assets against which enforcement may be obtained are located outside the state in which a judgment has been rendered, it is necessary for both counsel for the plaintiff and the defendant to have a clear understanding as to the basis on which judgments may be enforceable in other countries where the assets of the defendant may be located. Creditors are interested in presenting their claims on the merits only once, and, in doing so, to obtain judgments that may be enforced, as efficiently as possible, in countries where the defendants' assets may be located. Conversely, debtors' counsel need to be able to advise their clients as to the vulnerability of their clients' assets to execution on the basis of the enforcement of judgments obtained in countries outside those in which their clients' assets are located.

Countries' laws vary, however, both as to defenses that can be asserted to prevent the recognition and enforcement of foreign judgments and as to the procedural mechanisms by which enforcement is obtained.

The practicalities of the recognition and enforcement of foreign money judgments are discussed with particularity in each of the chapters of this book. Sometimes, as within the European Union, the task of understanding the nature and scope of foreign judgment enforcement is made easier through international agreements. In other countries, notably the United States, which is not a party to any judgment-enforcement treaties or

conventions, the task of understanding the applicable law is more difficult, and is made no easier because the only judgment-enforcement law is that of the fifty separate states.

The law applicable to the enforcement of judgments is both procedural and substantive and both accepting of foreign determinations and distrustful of them. Obviously, it is inappropriate for judgments to be recognized and enforced against persons who have had no opportunity to learn of a lawsuit and to defend against it. More complications arise when jurisdiction is obtained over defendants on the basis of theories that are not universally recognized. Issues may also arise as to the fairness of the proceeding out of which a judgment was obtained and, indeed, as to the impartiality of an entire judicial system.

Accordingly, there is much to be learned in this book, not only when there is a need to enforce, or defend against the enforcement of, a judgment rendered in another country, but also to obtain the kind of broad and sophisticated understanding that informs the advice that lawyers need in order to be able to formulate their clients' strategies when they are, or expect to be, involved in international commercial disputes.

— Lawrence W. Newman, Editor