

## United States

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### 1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

- At present, there is no federal statute for enforcement and recognition of foreign (non-U.S.) judgments. Enforcement and recognition of foreign judgments is a matter of state law, and is done on a state-by-state (including territories) basis. In some cases, it is done on a county-by-county basis within the state. The 1962 Uniform Foreign Money-Judgments Recognition Act provided mandatory and discretionary criteria for a state to enforce and recognize foreign judgments, and was ultimately enacted, though not always verbatim, in 32 states. For those states that did not enact the statute, they relied on principles of comity. Some states allowed the foreign judgment to be docketed and others required the commencement of an action. In 2005, the uniform act was modified to clarify certain provisions, by (1) distinguishing between judgments of different U.S. states and foreign judgments, (2) emphasizing the burden of proof for recognition is on the party seeking same, (3) the burden of proof to establish a ground for non-recognition is on the party raising it, (4) an action is required to establish recognition, and (5) a statute of limitations applies for recognition based on the country of origin, and if none exists, a 15 year limit is imposed. 30 states, which includes some states that enacted the 1962 version) have enacted the 2005 version, leaving 10 states with the original 1962 enactment intact. Essentially, a foreign judgment granting or denying recovery of money (excluding taxes, fines and penalties, or divorce-related issues) are to be recognized and enforced, but the court may not recognize the foreign judgment if the original tribunal (1) was not impartial, (2) lacked personal jurisdiction over the defendant or (3) lacked subjected matter jurisdiction. Discretionary grounds for non-recognition and enforcement include lack of notice, fraud, public policy grounds, a conflicting judgment, contrary to a forum selection provision, inconvenient forum, substantial doubt as to integrity of the court, or incompatible with due process. Note that some states have added reciprocity, or otherwise may differ from these criteria.
- The United States has signed by not ratified the Convention of 30 June 2005 on Choice of Court Agreements and the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.
- The Uniform Law Commission's 2019 Registration of Canadian Foreign Money Judgments Act has been adopted in five jurisdictions, and provides for an expedited process of enforcement of recognition that complements the 2005 Act for Canadian judgments.

2.	<b>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</b>
	<ul style="list-style-type: none"> <li>• Pursuant to the 2010 “SPEECH Act” (The Securing the Protection of our Enduring and Established Constitutional Heritage Act, 28 U.S.C. §§ 4101-4105, codifies non-recognition of foreign defamation judgments issued by courts that do not provide equivalent protection for freedom of speech and press as in the United States or otherwise failed to comport with U.S. due process considerations, or is inconsistent with Section 230 of the Communications Act of 1934 relating to internet service providers.</li> <li>• Principles of comity under <i>Hilton v. Guyot</i>, 159 U.S. 113 (1895).</li> </ul>
3.	<b>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</b>
	<ul style="list-style-type: none"> <li>• The federal Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 et seq., with related statutory sections addressing the procedural aspects provides the exclusive basis for bringing claims against foreign states or their agencies and instrumentalities. The general rule is that they are immune from jurisdiction of federal and state courts, unless a statutory exception exists. Those statutory exceptions are situation (1) in which the foreign state has explicitly or implicitly waived immunity, (2) in which commercial activity is involved in delineated situations, (3) in which there has been a wrongful taking of property in violation of international law, (4), in which rights in property in the US are acquired by succession or gifts or are rights in immovable property in the U.S., (5) involving tortious claim occurring in the U.S., except for the exercise of certain discretionary functions or certain specified torts, such as libel or slander, among others, and (6) certain arbitration claims or proceedings to enforce same.</li> <li>• There is a further separate exception to immunity for terrorism.</li> <li>• While the foreign state shall be liable to the same extent as a private party, it shall not be liable for punitive damages.</li> <li>• The foreign state shall not be immune from counterclaims against which it would not be entitled to immunity as set forth above, or for counterclaims arising out of the same claim the foreign state has brought, or is limited in amount or kind of the claim by the foreign state.</li> <li>• The property of the foreign state is immune from attachment, arrest and execution except as may be specified in the FSIA or by international agreement.</li> <li>• There is concurrent jurisdiction in both federal and state courts for Foreign Sovereign Immunity Act claims. 28 U.S.C. § 1602; <i>Martropico Compania Naviera S.A. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>, 428 F. Supp. 1035, 1037 (S.D.N.Y. 1977).</li> </ul>
4.	<b>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</b>
	<ul style="list-style-type: none"> <li>• See above for the exceptions to the FSIA.</li> <li>• The “crime of aggression” is defined in the Rome Statute of the International Criminal Court, to which the United States is <b>not</b> a party. Under the Alien Tort</li> </ul>

	<p>Statute, 28 U.S.C. § 1350. The United States does allow for jurisdiction in federal courts of civil actions by an alien in tort that violates the law of nations or a treaty of the United States, but in recent years this has been limited by the Supreme Court to situations where there are sufficient ties to the United States, and that common law tort liability under the ATS does not reach non-U.S. corporate defendants unless covered by a U.S. statute.</p> <ul style="list-style-type: none"> <li>• Certain claims are also allowed under the Torture Victim Protection Act of 1991, 28 U.S.C. § 1350.</li> </ul>
<b>5.</b>	<b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b>
	<ul style="list-style-type: none"> <li>• Due process must be met in a case against a foreign state. The FSIA provides subject matter jurisdiction, but personal jurisdiction must be established, and under the FSIA, a court has personal jurisdiction over the foreign state as long as proper service was made under the FSIA’s rules for service, and there is an independent analysis as well that the “minimum contacts” Constitutional requirement is met. The exception to this is that a foreign state itself, and its alter egos, are not “persons” for purpose of the due process clause, but state agencies and instrumentalities are separate legal persons and therefore are entitled to that separate independent analysis. <i>Gater Assets Ltd. V. AO Moldovagaz</i>, 2 F.4<sup>th</sup> 42, 49 (2d Cir. 2021). Such due process considerations of minimum contacts need to demonstrate a “purposeful availment” of the entity to do business in the United States. <i>Republic of Argentina v. Weltover, Inc.</i>, 504 U.S. 607, 620, 112 S. Ct. 2160, 2169, 119 L. Ed. 2d 394 (1992).</li> </ul>
<b>a.</b>	<b><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></b>
	<ul style="list-style-type: none"> <li>• Service under the FSIA is covered in 28 USC § 1608 and provides for service on the foreign state or political subdivision under Section 1608(a) as follows: (1) under a “special arrangement” between plaintiff and the foreign state, (2) if there is no special arrangement, then pursuant to treaty, (3) or if neither of the above is feasible, then by sending the summon and complaint, and a translation by mail requiring signed receipt, from the US clerk to the head of the foreign ministry of affairs, or (4) if (3) fails within 30 days, then by sending the paperwork to the U.S. Secretary of State.</li> <li>• Service on agencies or instrumentalities under Section 1608(b) is similar to (1) and (2), except that if those fail, then by (3) use of letters rogatory, any form of mail requiring receipt, or per court order consistent with the local law of the foreign state.</li> </ul>

<b>b.</b>	<b><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></b>
	The court has flexibility in such circumstances to order a means of service “reasonably calculated to give actual notice,” and can include a wide array of means, including via social media. In re Terrorist Attacks on Sept. 11, 2001, No. 03-CV-9848, 2022 WL 1088567, at *7 (S.D.N.Y. Apr. 5, 2022)
<b>c.</b>	<b><i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i></b>
	The FSIA is a civil statute, and generally the right to appointed counsel or sufficiency of counsel as an ethical matter would not apply in civil proceedings of the nature embodied in the FSIA. The factors affecting enforcement proceedings have been noted above.
<b>d.</b>	<b><i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i></b>
	<p>Entry of default judgment under the FSIA is permitted under Section 1608 upon presentation of evidence satisfactory to the Court, similar to that under the federal rules, but courts have the authority to adjust the evidentiary requirements depending upon the facts and circumstances. <i>Warmbier v. Democratic People's Republic of Korea</i>, 356 F. Supp. 3d 30, 42 (D.D.C. 2018)</p> <p>“A default judgment may be entered when (1) the Court has subject matter jurisdiction over the claims, (2) personal jurisdiction is properly exercised over the defendants, (3) the plaintiffs have presented satisfactory evidence to establish their claims against the defendants, and (4) the plaintiffs have satisfactorily proven that they are entitled to the monetary damages they seek.” <i>Braun v. Islamic Republic of Iran</i>, 228 F.Supp.3d 64, 75 (D.D.C. 2017)</p>
<b>6.</b>	<b>What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?</b>
	<ul style="list-style-type: none"> <li>• “Absent an explicit waiver of immunity, a foreign state is immune from prejudgment attachment of its assets used for commercial activity in the United States. See 28 U.S.C. § 1610(d)” <i>Sea Transp. Contractors, Ltd. v. Indus. Chimiques du Senegal</i>, 411 F. Supp. 2d 386, 391 (S.D.N.Y. 2006)</li> <li>• Generally, foreign state assets are exempt from attachment or execution in the United States on a judgment obtained against it, unless covered by treaty, the foreign state has waived immunity in aid of execution, the property was used for the commercial activity that was the basis of the claim, the execution relates to a judgment obtained based on violation of international law, the property involved succession or gift or is immovable in the United States, it relates to an automobile or casualty insurance indemnification policy, is based on an arbitral</li> </ul>

	<p>award, or relates back to a claim prior to 2008 from which the state would not have been immune, and also for organizations designated by the President as immune under the International Organizations Immunities Act, and property of a foreign exchange bank or monetary authority, or if the property is in connection with military authority, and a special exception relating to the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act. See FSIA Sections 1610 and 1611; <i>Bank Markazi v. Peterson</i>, 578 U.S. 212, 217, 136 S. Ct. 1310, 1318, 194 L. Ed. 2d 463 (2016)</p>
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