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JAMES MCKAY: Chair of the D.C. Uniform Law Commission says there are gaps in law.

Fulfilling foreign judgments

D.C. bill could make it easier to enforce money collections from abroad.

BY ZOETILLMAN

A new bill before the District of Columbia Council could help parties trying to collect on foreign money judgments, according to attorneys supporting the law.

Enforcing these judgments can be a tricky business, often involving a global hunt for assets and defendants. Having a U.S.-based court put its weight behind a judgment—assuming the case has local ties—can help. The problem, according to attorneys familiar with these cases, is that procedures in place to guide local courts through recog-

nizing foreign judgments are outdated and unclear in many states and the District of Columbia.

A revised version of the D.C. law, the Uniform Foreign-Country Money Judgments Recognition Act, was introduced by D.C. Councilmember Phil Mendelson in April and would replace procedures enacted in 1995. If passed, the law would apply to both local and federal courts in Washington.

The law on the books in the District of Columbia and the states was originally written in 1962 by the National Conference of Commissioners on Uniform

D.C. bill aims to clarify foreign-judgment law

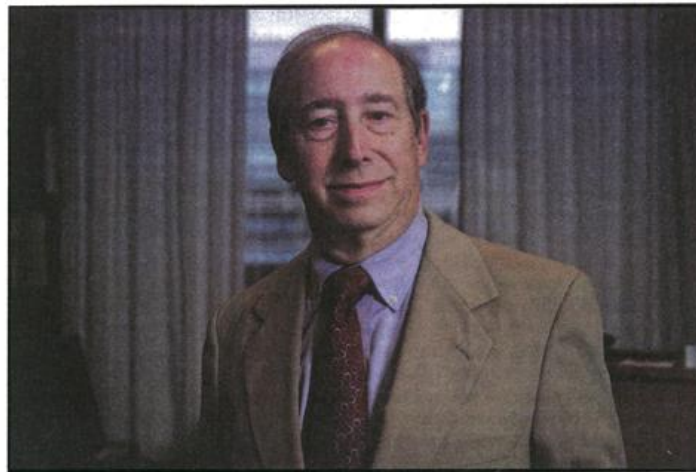
FOREIGN MONEY, FROM PAGE 17

State Laws, commonly known as the Uniform Law Commission. The commission is now pushing the revised version under consideration in Washington. In the four decades since the original law was written, legal disputes in several states exposed gaps, said James McKay Jr., the chairman of the District of Columbia Uniform Law Commission, which serves as a local affiliate to the national group.

No major challenges to the law have come out of Washington courts. Still, in his testimony before Mendelson on May 31, McKay said the new law would clarify ambiguous parts of the law that have caused problems in other states. In one case, for example, the U.S. Court of Appeals for the 5th Circuit reversed a lower court's denial of recognition of a foreign judgment, based on an issue that went unsaid in the 1962 version.

In the 1999 ruling, the appellate judges found that, although a 48% interest rate on a judgment issued by a Mexican court was at odds with what would be accepted by a U.S. court, Texas' version of the statute—based on the 1962 model law—didn't expressly allow judges to consider the terms of a judgment when deciding whether to recognize it. "After 43 years...we had a lot of experience using the older act and the courts were going different ways on things," said McKay, also a senior assistant attorney general for the city.

Peter Trooboff, a senior counsel to Washington's Covington & Burling who specializes in international law, said removing any confusion for companies looking to have foreign judgments enforced by U.S.-based courts encourages foreign courts to do the same. "Why



CLEAR: Peter Trooboff, international law expert and senior counsel to Covington & Burling, says removing confusion for companies looking to have foreign judgments enforced encourages foreign courts to do same.

should you have to go hunting and pecking? Why shouldn't it be clear on the face of the statute?" he said. "It wasn't as though you couldn't get answers, it's that you facilitate and make it easier for parties to find the answers."

DELAYED PASSAGE

Although the national Uniform Law Commission drafted the original version of the statute half a century ago, states and other jurisdictions were slow to pass it.

Kieran Marion, legislative counsel for the commission, said procedural matters are often pushed to the bottom of the to-do list, but over time the majority of states either enacted the law or adopted similar provisions through common law.



CRITIC: Minh Ngoc Nguyen, with Bluestone Law International in Bethesda, is skeptical of the D.C. bill.

The law, in its past and present form, does not apply to tax or domestic judgments. It offers grounds for courts to deny recognition if the respondent can prove that the foreign court proceedings are incompatible with due process protections and other federal and local public policy. As international commerce expanded during the past four decades, the commission saw a need to take another look at the statute as cases across the country exposed gaps, Marion said.

A new section added to the law, for instance, explains that judges don't have to find the entire judicial system of a foreign country flawed in order to deny a judgement, and have the option of instead just considering the validity of the specific underlying case. "It's a more narrow focus without having to implicate the entire system of a country," Marion said. "It's judicial flexibility more than anything." The changes also include specifying a 15-year statute of limitations for enforcement.

The bill has its detractors, who say it could slow down the process by requiring parties to jump through legal hoops. Minh Ngoc Nguyen, who heads the international litigation practice at Bluestone Law International in Bethesda, Md., said the revised law would take other options for having a foreign-country judgment recognized off the table. "The way the new law is worded...if you want to recognize a foreign country judgment, you have to file a new lawsuit," she said. "It puts more obstacles in the way of a foreign-country creditor."

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