



Primerus

The World's Finest Law Firms

“Enforcing Foreign Judgments: We Won the Battle, Now What?”

June 20, 2013 (1:30-2:30 p.m.)

Presented by:

Chad Alvaro, Esq. – Mateer & Harbert, P.A. – (Orlando, FL)
Caroline Berube, Esq. – HJM Asia Law & Co LLC – (Guangzhou, China)
Robert Gegios, Esq. – Kohner, Mann & Kailas, S.C. – (Milwaukee, WI)
Li-Pu Lee, Esq. – Formosan Brothers – (Taipei, Taiwan)
**Bettie Sousa, Esq. – Smith Debnam Narron Drake Saintsing & Myers, LLP –
(Raleigh, NC)**

- I. **INITIAL QUESTIONS AND DECISIONS FOR COUNSEL TO CONSIDER**
 - A. Where is the potential defendant (debtor) located?
 - B. Where are the debtor's assets located?
 - C. Is there a court here that will be able to hear this controversy?
 - i. Subject matter jurisdiction
 - ii. Federal versus state court
 - iii. Docket issues, i.e., speed to judgment
 - iv. Prejudgment remedies
 - a. Attachment
 - b. Claim and delivery (replevin)
 - c. Preliminary injunction
 - D. Is there *in personam* jurisdiction over the debtor here?
 - i. Consent to jurisdiction
 - a. Clauses in contracts
 - b. Variation within states
 - c. Long-arm statutes
 - d. Certificates of authority
 - e. First to sue
 - ii. Constitutional requirements
 - a. Minimum contacts
 - b. Due process



Primerus

The World's Finest Law Firms

- iii. Service
 - a. Treaties
 - b. Statutory agents, such as registered agents
 - c. Private process servers, Fed Ex, etc.

II. ARBITRATION OR COURTS?

- A. Short-term considerations
 - i. Mandatory arbitration
 - ii. Award enforcement by courts
 - iii. Availability or lack of availability of certain remedies
 - iv. Expense considerations
- B. Long-term considerations
 - i. Enforcement of US arbitration award in foreign countries
 - ii. Enforcement of non-US arbitral awards by US courts
 - a. Federal courts
 - b. State courts
 - iii. Challenges to enforcement
- C. Conventions
 - i. New York Convention
 - a. 10 June 1958
 - b. Convention on the Recognition and Enforcement of Foreign Arbitral Award
 - ii. Panama Convention
 - a. 30 January 1975
 - b. The Inter-American Convention on International Commercial Arbitration

III. HISTORY, CONTEXT, AND LESSONS FROM REAL CASES

- A. *Hilton v. Guyot* – Genesis of American law regarding foreign judgments
- B. Uniform Foreign Money Judgments Recognition Act (Uniform Act)
- C. 2005 Revised Uniform Act
- D. Adoption by states (Y? N?)



Primerus

The World's Finest Law Firms

- E. Reciprocity
- F. *Osorio v. Dole* – Lessons in Enforcement and Forum

IV. EFFECTS OF BANKRUPTCY

- A. When the bankrupt debtor is a US business entity
 - i. Enforcement of foreign judgments in the US Bankruptcy Courts
 - ii. Trustee's actions and powers
- B. When the bankrupt debtor is non-US business entity
 - i. Recognition by US Bankruptcy Courts of foreign insolvency proceedings
 - ii. When their debtor is our creditor?

V. ENFORCEMENT OF FOREIGN JUDGMENTS IN THE PEOPLE'S REPUBLIC OF CHINA

- A. Regulation from Supreme People's Court regarding Handling the Request of Judicial Assistance of Delivery of Judicial Document and of Investigation according to International Convention and Bilateral Judicial Assistance Treaties
- B. The importance of reciprocity
- C. Treaties with various countries
 - i. Civil, Commercial, Criminal
 - ii. Limitations
 - iii. "Judicial Assistance only"
 - iv. "Arbitration Awards only"
- D. Practical alternatives
 - i. When a new lawsuit must be filed
 - ii. Hong Kong and other venues
- E. Foreign arbitration awards
 - i. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
 - ii. Interim orders – not enforceable
 - iii. Delays

VI. ENFORCEMENT OF FOREIGN JUDGMENTS IN TAIWAN

- A. Common law country vs. civil law country



Primerus

The World's Finest Law Firms

- B. Article 402 of Taiwan Civil Procedure Act
- C. Challenges to foreign judgments
 - i. Lack of jurisdiction by judgment forum over Taiwanese company
 - ii. Default, unless proper service on defendant in Taiwan
 - iii. Judgment is against public policy or morals
 - iv. No mutual recognition with judgment forum. *Mutatis mutandis*
- D. Types of damages
 - i. Monetary damages
 - ii. Non-monetary damages
- E. Taiwanese Arbitration laws

