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## THE ENFORCEMENT OF U.S. JUDGMENTS IN FRANCE

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### *A judgment is as good as its enforcement.*

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Enforcement may present some difficulties when it is sought in the same country as the one in which the judgment was rendered but it is complicated by nature when enforcement must be sought abroad, i.e., in a country other than the one in which it has been obtained.

This is a well-known issue in international law, especially since states usually regard enforcement in their territory as part of national sovereignty, and frown upon Foreign judgments, even refusing to recognize them.

In such a case, where foreign judgments are not recognized internally, the plaintiffs have to get a local judgment in order to enforce their rights, with all the risks attached to a new judge trying the case anew.

This changed in 1895 in the U.S., with the *Hilton v. Guyot* case decided by the Supreme Court. The Supreme Court decided to recognize Foreign judgments based on the “comity of nations” principle.

This principle provides that private rights acquired under the laws of foreign states shall be respected and enforced by U.S. courts unless contrary to the policy or damaging to the interests of the state where this is sought to be done.

This principle should apply only in case of reciprocity though, i.e., in case the Foreign State that rendered the judgment also recognizes U.S. judgments on its soil. Such was not the case in the *Hilton v. Guyot* case, and the Foreign judgment whose recognition was sought did not get recognized in the U.S. It happened to be a French one.

**U.S. judgments will be recognized in France provided that three cumulative conditions are met**

It took French Courts almost 70 years to come up with the equivalent to the *Hilton v. Guyot* case. Since then, French Courts have routinely recognized Foreign judgments, in particular U.S. judgments, allowing for their enforcement in France.

U.S. judgments will be recognized in France provided that three cumulative conditions are met:

1. the U.S. Courts had jurisdiction;
2. the U.S. judgments do not violate French international public policy;
3. the U.S. judgments were not obtained as a result of a fraud (i.e., the U.S. judgments are prima facie valid, but were obtained by a scheme aiming at circumventing French law, as the outcome of the scheme would have been unlawful under French law, and the parties always intended to benefit from said outcome in France).

Family law is an area of choice for international recognition and enforcement matters, with issues relating to international adoption, surrogacy... There are also many recognition judgments in commercial law, especially in case of debt recovery.

The recognition procedure is pretty straight forward and can take as little as 6 months. An “enforceable” copy of the U.S. judgment, with an “apostille,” will be required to start the procedure, together with a sworn translation of the judgment into French, and an affidavit confirming that the judgment is final in the U.S.

### **The grounds to oppose the request for recognition**

There are few grounds to oppose the request for recognition and they are limited, as French Courts will not try the case anew, and will only verify whether the three cumulative conditions to recognize the Foreign judgment are met.

Jurisdiction is usually unproblematic, as is fraud.

French international public policy might be trickier. First, because its content is vague and leaves room for imaginative counterclaims. And second, because the U.S. judgments may have been default judgments.

The way U.S. default judgments are drafted often raises issues when trying to have them recognized in France,

as judgments are supposed to be self-sufficient under French law. This is not the case of U.S. default judgments which are stripped-down. Additional documents should therefore be adduced, such as prior orders from the U.S. Court, in order to demonstrate that the U.S. Courts rendered the default judgments after considering the validity of the plaintiff's claims.

Once recognition has been obtained, the U.S. judgment can be enforced in France, as if it was rendered by a French Court, with the full set of enforcement procedures at hand.

This being said, if one is about to start a procedure in the U.S., and knows that enforcement will take place in France once a judgment has been obtained, there is a matter of strategy to be considered before setting things into motion.

### **The asymmetrical choice of jurisdiction provision**

Even though recognition can be quite straight forward before French Courts, it will add time and cost to get satisfaction. Sometimes, it is worth getting a judgment from a French Court, in order to enforce it right away, instead of a U.S. judgment which will still need to go

through a recognition procedure before enforcement can be started.

This is particularly true for cases relating to the payment of invoices for deliveries made, for which room for challenge is narrow before Courts if the order, delivery and invoicing process is well-documented.

In this regard, it can be recommended to include asymmetrical choice of jurisdiction clauses in international contracts. The U.S. party may elect to either go before French or U.S. Courts, whilst the French party may only go before U.S. Courts. The French Courts have accepted the validity of such clauses, provided that the courts having jurisdiction are expressly listed (i.e., clauses such as "any courts having jurisdiction" are null and void). In case of issues relating to payments, requiring to enforce the future judgment in France, the U.S. party will then have the opportunity to go directly before French Courts. In other cases, for which no enforcement will be sought in France, the U.S. party will still have the opportunity to go before the U.S. Courts, and may have the U.S. judgment recognized in France later on, if need be.

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