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Arbitration provides parties with a means to resolve disputes outside of litigation in the national courts of one country or another. However, absent voluntary compliance with a money award, prevailing in arbitration does not secure satisfaction for the winning party. When dealing with a recalcitrant opponent, the prevailing party may need to resort to the judicial enforcement remedies available in jurisdictions where the debtor or its assets may be found. In the United States, enforcement consists of recognition or confirmation of the award as a judgment, and execution against the assets of the debtor. We describe the process below, focusing on recent developments of US law.

Judicial recognition of arbitration awards

To have access to the US judicial system to enforce an award, the award must be recognised as a court judgment. US courts will recognise commercial arbitration awards and awards rendered in investor-state disputes, however, the procedures can vary depending on the type of award, and whether the award is foreign or domestic.

Recognition of international awards – the New York Convention

Judicial recognition of foreign arbitration awards in the United States is governed by treaty. Most often, recognition is governed by statutes implementing the New York Convention,[1] to which most nations in the world are signatories. The New York Convention is implicated when a foreign arbitral award sought to be enforced in the United States was made in a state that is a party to the treaty.[2]

The New York Convention provides that to have a court recognise a final arbitration award, the winner of the award shall supply the court with the original award or a certified copy.[3] The court then 'shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon'.[4] Thus, under the New York Convention, international arbitration awards are presumed valid provided the proper procedures are followed.

In the United States, the New York Convention is incorporated into Chapter 2 of the Federal Arbitration Act (FAA), which also gives US federal district courts subject matter jurisdiction over recognition and enforcement proceedings.[5] Pursuant to the New York Convention and the FAA, a party seeking recognition of an arbitration award can proceed on an expedited basis.[6] The party does not need to initiate a civil action in the ordinary way, by filing a complaint, but can instead file a petition to confirm the award.[7] In addition, the petition can be resolved on the papers without oral argument or discovery.[8]

Despite this summary process, the New York Convention and the FAA do provide several defences to recognition. Under the New York Convention, recognition may be refused on any one of the following grounds:

- a party is suffering from incapacity or the arbitration agreement is otherwise invalid;
- there is insufficient notice to the party against whom the award is invoked;
- the award is outside the scope of the arbitration agreement;
- the composition of the arbitral tribunal or procedure was not compliant with the parties' agreement or, absent such an agreement, the laws of the jurisdiction where the arbitration took place;
- the award has not yet become binding on the parties;
- the dispute was not arbitrable; or
- recognition of the award would be against public policy.[9]

The FAA provides that a 'court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the [New York] Convention.'[10]

Although debtors may invoke public policy arguments to resist or delay recognition, US courts carry a presumption of validity into most recognition cases. For example, a US federal district court recently rejected a challenge by the Republic of Ecuador to the recognition of a US$96 million arbitration award rendered in favour of Chevron. Ecuador had argued the award was beyond the scope of the submission to arbitration and was contrary to US public policy.[11] The court rejected the arguments and reiterated that '[c]onsistent with the emphatic federal policy in favour of arbitral dispute resolution recognised by the Supreme Court [...] the FAA affords the district court little discretion in refusing or deferring enforcement of foreign arbitral awards.'[12] Ecuador's appeal of that decision met a similar fate.[13]

To be able to recognise an arbitration award, a court must have jurisdiction to do so. In the United States, a court ordinarily cannot adjudicate a matter unless it has jurisdiction over both the subject matter of the action and jurisdiction over the parties (or, in certain circumstances, over property that is the object of the dispute). In the recognition context, the FAA confers subject matter jurisdiction in the US district courts and, where the court does not have jurisdiction over the parties, it may nonetheless assert jurisdiction where it has jurisdiction over the award debtor's assets situated in the jurisdiction.[14] Indeed, several US federal courts have held that either jurisdiction over the person of the debtor or over property in which the debtor has an interest is required for a district court to recognise foreign arbitral awards pursuant to the New York Convention.[15] Thus, an award creditor, when seeking to have his or her award recognised as a US judgment, should generally opt to bring the petition in a jurisdiction where the defendant has a presence, or has some property that can be used to satisfy a resultant judgment. An award creditor should also be mindful that under the FAA, recognition of a foreign award must be sought within three years after the award was rendered.[16]

Recognition of international awards – the ICSID Convention

Many investor-state disputes are arbitrated before the World Bank's International Centre for Settlement of Investment Disputes (ICSID). The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), entered into force in 1966, created ICSID to resolve disputes between private investors from one state and a foreign state or state-owned enterprise.[17] Where ICSID has jurisdiction,[18] its decisions are final and are subject only to review within ICSID itself.[19]

The ICSID Convention is codified in US law under section 1650a of Title 22 of the United States Code.

Under the ICSID Convention and the US legislation implementing it, a final ICSID award is meant to be treated as a final judgment of a domestic court.[20] Thus, unlike an award subject to recognition under the New York Convention, which includes several defences to recognition that a party can invoke, US courts do not have the power to set aside, modify, or otherwise substantively review an ICSID award. Courts can review ICSID awards only to confirm their authenticity.

Neither the ICSID Convention nor the US federal legislation that codifies it sets forth procedures for the recognition process, and currently, there is disagreement among the US courts over what that process should be and which laws should govern it. The question is whether the procedures for recognition of an ICSID award should be determined by the law of the forum where the application is made (eg, the ordinary recognition procedures set forth in the state laws of New York or California, or wherever recognition is sought) or by reference to the federal sovereign immunity law, the US Foreign Sovereign Immunities Act (FSIA), since ICSID awards involve foreign sovereigns. That question is significant because the laws of some US states allow recognition to proceed on an ex parte basis, whereas initiating a plenary action pursuant to the FSIA would require that a foreign sovereign be served with process.[21]

The US District Court for the Southern District of New York (SDNY) has held in two recent cases that the law of the forum state should control, and thus allows for recognition of an ICSID award by an ex parte expedited proceeding available under New York law.[22] The SDNY rejected arguments of foreign sovereigns that a plenary proceeding with notice to the debtor was required under the FSIA, reasoning instead that 'the history and terms of the ICSID Convention unavoidably reveal that the contracting states to the ICSID Convention intended to put in place an expedited and automatic recognition procedure.'[23] Another court, the US District Court for the District of Columbia, reached the opposite result: that a petitioner 'must file a plenary action, subject to the ordinary requirements of process under the Foreign Sovereign Immunities Act, to convert its ICSID award [...] into an enforceable domestic judgment'.[24]

The requirement of a plenary action can have significant practical implications on an award creditor. A plenary proceeding would require international service of process on the sovereign, personal jurisdiction over the sovereign, and the selection of a proper venue.[25] International service of process alone can take up to six months or more to effectuate. In contrast, the ICSID awards that the SDNY recognised pursuant to the ex parte procedure available under New York law were recognised on the very same day the ex parte petitions were filed.

This issue is presently before a federal appeals court, the US Court of Appeals for the Second Circuit, and a ruling by that court may help settle the procedures for recognition of ICSID awards in the United States. In the meantime, ICSID award creditors should be aware of the possibility of important distinctions among applicable recognition procedures, particularly in relation to time and cost, depending on the forum within the United States where the proceedings are brought.

Recognition of domestic arbitration awards

Unlike international awards, the recognition of domestic arbitration awards in the United States is not governed by treaty, but rather by state and federal laws. Where the underlying arbitration case involves interstate commerce (ie, commerce in multiple states), Chapter 1 of the FAA governs recognition.[26] Otherwise, state law governs. Many states have adopted similar legislation, based on a model law entitled the Uniform Arbitration Act, some to govern the recognition of an arbitration award that is not subject to Chapter 1 of the FAA.

Chapter 1 of the FAA and the Uniform Arbitration Act both create a strong presumption in favour of the validity of arbitration awards. Upon application to the appropriate court, the court must grant the application and recognise the arbitration award as a judgment unless one of a limited number of bases for vacating the award exists.[27] Chapter 1 of the FAA includes four such bases, which are also contained within the Uniform Arbitration Act:

- where the award was procured by corruption, fraud, or undue means;
- where there was evident partiality or corruption;
- where the arbitrators were guilty of misconduct, such as refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; and
- where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.[28]

Parties seeking recognition of a domestic arbitration award should also be aware of limitations periods. Chapter 1 of the FAA states that a party seeking recognition of a domestic arbitration award must do so within one year after the award is issued.[29] The Uniform Arbitration Act does not include an express limitations period, but in some jurisdictions a court may choose to import a limitations period from a related statute – such as the statute of limitations that would govern the underlying claim.[30]

Execution against property

Having converted his or her arbitration award into a court judgment, the arbitration winner becomes a judgment creditor, and can utilise the post-judgment devices available to him or her under state and federal law to identify and seize non-exempt property of the debtor to satisfy the judgment.

Discovery in aid of execution

US state and federal law provide a judgment creditor with a variety of tools for locating the property of the judgment debtor.

When enforcing a US federal judgment, including a money judgment based on an arbitration award, the Federal Rules of Civil Procedure allow a judgment creditor to use all of the discovery devices available to ordinary civil litigants. Those include means for obtaining judicially compelled disclosure of financial records and other documents, answers to written questions, and sworn testimony from both the judgment debtor and from third parties. The substantive scope of post-judgment discovery is very broad, especially when compared to the disclosure regimes in civil

law countries. A judgment creditor may require the judgment debtor or any third party to disclose all information reasonably calculated to lead to evidence of the judgment debtor's assets.[31]

In addition, the federal rules allow a judgment creditor to utilise the post-judgment remedies, including discovery devices that are available under the laws of the US state in which the federal court sits. Some state laws provide for powerful discovery tools. For example, in certain states, a judgment creditor can compel the debtor to appear before the court to submit to an examination regarding the debtor's assets and affairs.[32]

When enforcing a US state court judgment (as opposed to a federal court judgment), a judgment creditor ordinarily must rely on the state's post-judgment laws and procedures, including those providing for discovery in aid of execution. State court procedures throughout the US, like the federal rules, support broad post-judgment discovery in aid of execution.[33]

Further, post-judgment disclosure in the United States can embrace information concerning a debtor's assets, wherever in the world those assets may be located and wherever in the world the information may be kept. If the court has personal jurisdiction over the judgment debtor or a third party from whom discovery is sought, the judgment creditor may seek any information relevant to the debtor's assets that the party has in its possession, custody, or control, regardless of the location of the debtor's assets or the location of the records or other information sought.[34] Where the information sought is subject to a foreign blocking statute, bank secrecy law or data privacy law, the discovery target may object to producing information on that basis, although US courts will not necessarily defer to those foreign legal protections.[35]

That a judgment creditor may seek discovery about assets outside the US applies even where the debtor is a foreign sovereign.[36] That is notable because under the FSIA, a judgment creditor can only execute against property of the sovereign that is used for commercial activity in the United States.[37] Similarly, although a judgment creditor cannot ordinarily execute on a debtor's bank deposits associated with a foreign branch,[38] the creditor is nonetheless entitled under current US law to obtain the account records, so long as the bank itself is subject to the court's jurisdiction (eg, because it is present in New York) and the bank has possession, custody, or control of the records sought.[39] Thus, US courts have the authority to compel discovery even regarding assets that would not be subject to execution under US law. Consequently, even if the debtor does not have readily seizable property in the United States, a judgment creditor may still benefit from taking enforcement steps in the United States to obtain information about assets that may be subject to execution elsewhere. For example, because US-dollar-denominated international wire transfers are ordinarily cleared through New York banks, serving post-judgment subpoenas on the banks can yield considerable information about the debtor's finances around the world.

Execution

In the United States, there is no general national law of execution (except in certain maritime matters). Whether an arbitration award is confirmed as a federal or state court judgment, the procedures for execution are supplied by the laws of the state in which enforcement or execution is sought.[40] Thus, except to the extent necessary to accommodate differences in specific court practices, the procedures followed in federal and state courts are generally the same.

Each US state has its own execution laws, and while there can be substantial overlap, a judgment creditor should be aware that the procedures available in different states can vary. Generally speaking, though, there are two broad categories of execution available to a judgment creditor: in personam remedies and remedies in rem.

In personam remedies

In personam remedies refer to court orders, or their equivalents, directed against either the debtor or a third party over which the court has jurisdiction, where noncompliance is ordinarily punishable by contempt. These can take the form of debtor or third-party turnover or conveyance orders, restraining orders or notices, or in personam garnishment or third-party debt orders. In personam remedies may be particularly useful when the property of the debtor is beyond the territorial jurisdiction of the court, precluding direct execution on the asset. In New York, for example, an attorney for a judgment creditor is authorised, without the need for approval from the court, to issue restraining notices to the debtor and to any third party holding assets of the debtor, having the effect of a court order prohibiting 'any sale, assignment, transfer or interference with any property in which [the judgment debtor] has an interest'.[41] The restraint operates on the person (in personam) and does not have an effect on title or priority among competing creditors. In certain other US jurisdictions, a restraint may only issue from the court upon application and hearing.

If the debtor's property cannot be reached directly through levy or execution (discussed below), the laws of many states provide that a judgment creditor may seek an order from the court directing the debtor or a third party in possession of the debtor's property to deliver or convey the property to the judgment creditor or to a sheriff. These types of orders are commonly known as 'turnover orders.' As with most court orders, compliance may be coerced through the threat of fines or even imprisonment for contempt.

Whether a court can order a party to turn over property situated outside of the territorial jurisdiction of the court depends on the state in which the post-judgment proceedings are brought. The courts of some states, most notably New York, have held that they may order a debtor or a third party (over whom the court has personal jurisdiction) to bring the debtor's personal property situated anywhere in the world into New York to turn it over to the creditor.[42] However, the courts of other states effectively limit turnover orders to property within the court's territorial jurisdiction.[43]

Even where a court's turnover orders can direct a debtor to deliver out-of-state property into the state, such as in New York, they are subject to common-law limitations. For example, the New York courts have recently confirmed the continuing effect of the common law 'separate entity rule,' a doctrine of New York banking law. The rule provides that even when a bank is present in New York and subject to the court's personal jurisdiction, the bank's foreign branches are to be treated as separate entities for purposes of attachment, execution and turnover orders. As a result, New York courts cannot order a bank to turn over a judgment debtor's deposits that are associated with foreign branches.[44]

Remedies in rem

In addition to in personam remedies, a judgment may be enforced against the debtor's property itself through execution by attachment, levy, garnishment or the appointment of a receiver. These are in rem proceedings where jurisdiction derives not from the court's personal jurisdiction over the judgment debtor or a third party, but rather from the court's jurisdiction over real or personal property located within its territorial jurisdiction.

Execution against the debtor's property is typically accomplished by a writ of execution or its functional equivalent,[45] issued by the court in the federal district or state where the property is situated. The writ empowers a levying officer, such as a sheriff in state court or a US marshal in federal court, to seize and liquidate non-exempt real or personal property located within the court's jurisdiction. The proceeds, subject to the claims of any secured or superior creditors, are then applied to satisfy the judgment. In cases where the debtor's property is difficult to value or cannot be readily liquidated, the courts in many jurisdictions can appoint a receiver to administer the assets for the benefit of a judgment creditor.

In the United States, the recognition of an award as a judgment does not create a lien such that the award creditor obtains a priority right in the debtor's property that could trump claims of other unsecured creditors, such as other parties that subsequently obtain an arbitration award or judgment against the same debtor. Instead, a lien on the debtor's property is created by certain execution devices. For example, under New York law, delivery of a writ of execution to the proper law enforcement officer creates a lien on the judgment debtor's personal property, regardless of whether or when the sheriff or marshal is able to actually levy on the property. By contrast, service of a restraining notice in New York does not confer a lien.[46] Priority among judgment creditors is determined based on the date the creditors obtained their liens.[47] Which execution devices create a lien and which do not depends on the law of the state in which execution is sought.

The creditor should be mindful not only of steps the debtor may take to frustrate his or her enforcement efforts, but also how the enforcement efforts of other creditors can impact his or her ability to satisfy his or her award or judgment.

Conclusion

In the United States, courts are receptive to applications for the recognition of arbitration awards. Once the award is converted into a US money judgment, the award creditor can take advantage of the broad discovery powers available to US litigants to identify the debtor's assets, whether they may be located in the United States or another jurisdiction. Although execution devices differ from state to state, and the applicable procedures must be carefully followed, the creditor can employ a large set of tools that exists under US state laws to seize assets located in the United States, and in some instances to obtain orders directing the delivery of assets into the country for turnover in satisfaction of a judgment. On the whole, the United States is a favourable jurisdiction for enforcing international and domestic arbitration awards.

Notes

1 The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38. The United States also recognises the Inter-American Convention on International Commercial Arbitration (the 'Panama Convention'), which applies instead of the New York Convention in certain cases. The process for recognising an award under either treaty is similar. See *Corporacion Mexicana de Mantenimiento Integral, S de RL de CV v Pemex-Exploracion y Produccion*, 962 F. Supp. 2d 642, 653 (SDNY 2013) ('The Panama Convention and the [New York Convention] are largely similar, and so precedents under one are generally applicable to the other.'); *Freaner v Valle*, 966 F. Supp. 2d 1068, 1076 (S.D. Cal. 2013) ('The two Conventions share many of the same features and characteristics and Congress has even indicated that the two conventions are "intended to achieve the same results".').

2 New York Convention article I.

3 Id. at article IV. An award is considered 'final' 'if it resolves the rights and obligations of the parties definitively enough to preclude the need for further adjudication with respect to the issue submitted to arbitration.' See *Ecopetro SA v Offshore Expl. and Prod.* LLC, 46 F. Supp. 3d 327, 336 (SDNY 2014). So called 'interim awards,' which only resolve certain of the claims brought before the arbitrator, can also qualify as 'final' if they finally and definitely resolve those claims. See id.

4 New York Convention article III.

5 9 U.S.C. sections 201, 203 (1970).

6 *Mobil Cerro Negro Ltd v Bol. Rep. of Venez.*, 87 F. Supp. 3d 573, 595 (SDNY 2015).

7 Id.

8 Id.

9 New York Convention article V.

10 9 U.S.C. section 207 (1970).

11 See *Chevron Corp v Ecuador*, 949 F. Supp. 2d 57, 60 (D.D.C. 2013), aff'd, 795 F.3d 200 (D.C. Cir. 2015), cert. denied, No. 15-1088, 2016 WL 776386 at *1 (US 6 June 2016). In addition to the grounds for non-recognition under the New York Convention, Ecuador also argued unsuccessfully that the Court did not have jurisdiction to recognise the award under the Foreign Sovereign Immunities Act.

12 See *Chevron*, 949 F. Supp. 2d at 64 (internal citations and quotations omitted).

13 *Chevron Corp v Ecuador,* 795 F.3d 200, 207 (D.C. Cir. 2015), cert. denied, *Rep. of Ecuador v Chevron Corp*, No. 15-1088, 2016 WL 776386 at *1 (US 6 June 2016).

14 For example, real or personal property located in the territorial jurisdiction of the court or intangible property rights with legal situs in the district (such as a debt owed to the award-debtor by a third party present in the district).

15 See, eg, *Frontera Res. Azer. Corp v State Oil Co. of the Azer. Rep.*, 582 F.3d 393, 398 (2d Cir. 2009) (holding that 'district court did not err by treating jurisdiction over either [debtor] or [debtor's] property as a prerequisite to the enforcement of [creditor's] petition'); *Glencore Grain BV v Shivnath Rai Harnarain Co*, 284 F.3d 1114, 1127 (9th Cir. 2002) ('Considerable authority supports [creditor's] position that it can enforce the award against [debtor's] property in the forum even if that property has no relationship to the underlying controversy between the parties.'); but see *Base Metal Trading Ltd v OJSC 'Novokuznetsky Aluminum Factory,'* 283 F.3d 208, 213 (4th Cir. 2002) ('Yet, when the property which serves as the basis for jurisdiction is completely unrelated to the plaintiff's cause of action, the presence of property alone will not support jurisdiction.').

16 9 U.S.C. section 207 (1970).

17 ICSID Convention, 18 March 1965, 17 U.S.T. 1270, T.I.A.S. 6090, 575 U.N.T.S. 159 at article 1.

18 ICSID has jurisdiction over investment-related legal disputes between a state party to the ICSID Convention and a national of another state that is also a party to the treaty, where the parties have consented ICSID's jurisdiction. Id., at article 25.

19 Id., at article 53 (ICSID awards 'shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention.').

20 22 U.S.C. section 1650a(a) (1966) ('The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.').

21 See 28 U.S.C. section 1608 (1976).

22 *Mobil Cerro*, 87 F. Supp. 3d 573 (SDNY 2015); *Micula v Gov't of Rom.*, 2015 WL 5257013 (SDNY 2015).

23 *Mobil Cerro*, 87 F. Supp. 3d at 599 (emphasis added).

24 *Micula v Gov't of Rom.*, 104 F. Supp. 3d 42, 52 (D.D.C. 2015).

25 The FSIA provides that an action against a foreign sovereign can only be brought in certain judicial districts. The default district is the US District Court for the District of Columbia, but if the action has certain factual connections to another jurisdiction, then the action may be brought there instead. See 28 U.S.C. section 1391(f) (2011).

26 See 9 U.S.C. sections 2, 9 (1947).

27 See *Affymax, Inc v Ortho-McNeil-Janssen Pharm., Inc*, 660 F.3d 281, 284 (7th Cir. 2011); *Sch. City of E. Chi., Ind. v E. Chi. Fed'n of Teachers*, Local No. 511, A.F.T., 622 N.E. 2d 166, 168 (IN 1993).

28 9 U.S.C. section 10 (2002).

29 9 U.S.C. section 9 (1947).

30 See, eg, *Hanson v Larson*, 459 N.W.2d 339 (Minn. App. 1990) (applying statute of limitations for a breach of contract action to a recognition action).

31 See, eg, *E.M. Ltd v Rep. of Arg.*, 695 F.3d 201, 207 (2d Cir. 2012) ('The scope of discovery under Rule 69(a)(2) is constrained principally in that it must be calculated to assist in collecting on a judgment.') aff'd sub nom. *Rep. of Arg. v NML Capital, Ltd*, 134 S. Ct. 2250 (2014). We note that the Federal Rules of Civil Procedure governing the scope of discovery were amended in late 2015. The revised rules now provide that discovery must be 'proportional to the needs of the case.' Fed. R. Civ. P. 26(b)(1). It is unclear how, if at all, this new proportionality standard will affect the scope of discovery available in the post-judgment setting. Arguably any discovery aimed at identifying assets of the debtor is proportional to the needs of an enforcement case, although perhaps it may provide non-party discovery targets with an additional ground on which they can object to a burdensome discovery request. Thus, judgment creditors should, in the first instance, continue to conduct post-judgment discovery consistent with the broad scope that has been recognised by the courts.

32 For instance, Florida law provides, as part of its 'proceedings supplementary,' that upon motion by the judgment creditor 'the court shall require the judgment debtor to appear before it ... to be examined concerning property subject to execution.' Section 56.30, Fla. Stat. (Supp. 2016).

33 See, eg, *Vera v Rep. of Cuba*, 91 F. Supp. 3d 561, 569 (SDNY 2015) ('It is well-recognised that broad post-judgment discovery in aid of execution is the norm in federal and New York state courts' (internal citations and quotations omitted)).

34 See *EM Ltd*, 695 F.3d at 208 ('Thus, in a run-of-the-mill execution proceeding, we have no doubt that the district court would have been within its discretion to order the discovery from third-party banks about the judgment debtor's assets located outside the United States.'); see also NY C.P.L.R. 5224(a)(4)(a-1) (providing that a post-judgment subpoena subjects the target to disclosure of information 'whether the materials sought are in the possession, custody or control of the subpoenaed person, business or other entity within or without the state.').

35 See, eg, *Chevron Corp v Donziger*, 296 F.R.D. 168, 198 (SDNY 2013) ('[T]he [trial] court may 'impose discovery under the Federal Rules of Civil Procedure when it has personal jurisdiction over the foreign party,' notwithstanding provisions of foreign law that would prohibit production.').

36 See *Rep. of Arg.*, 134 S. Ct. 2250 (2014).

37 See 28 U.S.C. section 1610 (2012).

38 As discussed below in the context of execution, pursuant to a doctrine of New York banking law known as 'the separate entity rule,' even where the bank itself is subject to the court's jurisdiction, New York courts treat foreign branches of the bank as separate entities for purposes of execution on a judgment. Thus, the courts cannot order the bank to turn over assets that are associated with foreign branches.

39 See *B&M Kingstone, LLC v Mega Intern. Commercial Bank Co, Ltd*, 131 A.D.3d 259, 266, 15 NYS 3d 318, 323-34 (NY App. Div. 1st Dep. 2015) ('Thus, Motorola's expressly limited affirmation of the separate entity rule does not apply to the instant case, and the rule does not bar the court's exercise of jurisdiction over Mega to compel a full response to the information subpoena.').

40 See Fed. R. Civ. P. 69(a)(1) ('The procedure on execution – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located... .').

41 NY C.P.L.R. 5222(b).

42 See *Koehler v Bank of Bermuda*, 911 N.E.2d 825, 829 (NY 2009).

43 See, eg, *Sargeant v Al-Saleh*, 137 So. 3d 432, 435 (Fla. Dist. Ct. App. 2014) ('[W]e emphasise that allowing trial courts to compel judgment debtors to bring out-of-state assets into Florida would effectively eviscerate the domestication of foreign judgment statutes.'); *Feltner v US Army Fin. and Accounting Ctr.*, 643 S.W.2d 648, 649 (Mo. Ct. App. 1982) (holding that court could not order third party garnishee to turn over debtor's property even where court had jurisdiction over the garnishee if court did not also have jurisdiction over the property itself). Note that the law in Florida on this issue is unsettled. The *Sargeant* decision was issued by an intermediate appellate court and appears directly contradictory to an earlier ruling of a different intermediate appellate court in Florida. See *Gen. Elec. Capital Corp v Advance Petroleum Inc*, 660 So. 2d 1139, 1142 (Fla. Dist. Ct. App. 1995) ('It has long been established in this and other jurisdictions that a court which has obtained in personam jurisdiction over a defendant may order that defendant to act on property that is outside of the court's jurisdiction, provided that the court does not directly affect the title to the property while it remains in the foreign jurisdiction.').

44 See *Motorola Credit Corp v Standard Chartered Bank*, 24 NY 3d 149, 162 (2014) ('Finally, we decline Motorola's invitation to cast aside the separate entity rule.'); *Shaheen Sports, Inc v Asia Ins. Co, Ltd*, No. 11-CV-920 LAP, 2012 WL 919664, at *3 (SDNY 2012) (denying turnover petition on the basis that separate entity rule remained in effect and precluded turnover of assets at a foreign branch).

45 In some US states, a writ of execution is operative in relation to property in the hands of the debtor or a third party, while in other states separate writs must issue depending on who has custody of the debtor's property. For example, in New York, a writ of execution can be used to levy against property whether it is in the possession of the judgment debtor or a third party. See NY C.P.L.R. 5230. Colorado, however, provides different procedures for execution against property held by a third party garnishee. See C. R. of C. P. sections 69(a), 103.

46 *Aspen Indus., Inc v Marine Midland Bank*, 421 N.E.2d 808, 810-11 (NY 1981)

47 See NY C.P.L.R. 5202 (providing that delivery of an execution to a sheriff generally establishes priority in personal property vis-à-vis any transferee). Further, where multiple judgment creditors deliver an execution to the same enforcement officer, priority will be determined by the order in which the executions were delivered (although where multiple executions were delivered to different enforcement officers, priority is determined by the moment of levy). See NY C.P.L.R. 5234(b).

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