

[CHAPTER 658B]
UNIFORM FOREIGN-MONEY CLAIMS ACT

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" **[\$658B-1] Definitions.** In this chapter:

"Action" means a judicial proceeding or arbitration in which a money payment may be awarded or enforced in respect of a foreign-money claim.

"Conversion date" means the banking day next before the date on which money is, in accordance with this chapter:

- (1) Paid to a judgment creditor;
- (2) Paid to the designated official enforcing a judgment on behalf of the judgment creditor; or
- (3) Used to effect a recoupment or set-off of claims in different moneys in an action.

"Distribution proceeding" means a judicial or nonjudicial proceeding for an accounting, an assignment for the benefit of creditors, a foreclosure, for the liquidation or rehabilitation of a corporation or other entity, for the distribution of an estate, trust, or other fund in or against which a foreign-money claim is asserted.

"Foreign money" means money other [than] money of the United States of America.

"Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

"Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

"Money of the claim" means the money determined as proper by section 658B-4.

"Party" means an individual, a corporation, government or governmental subdivision or agency, business trust, partnership or association of two or more persons having a joint or common interest, or any other legal or commercial entity asserting or defending against a foreign-money claim.

"Rate of exchange" means the rate at which the money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by the party obliged to pay or to state a rate of conversion. If separate exchange rates apply to different kinds of transactions or events, the term means the rate applicable to the particular transaction or event giving rise to the foreign-money claim.

"Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for settlement by immediate payment, by charge to an account, or by an agreed delayed settlement not exceeding two days. "Bank-offered spot rate" means the rate of exchange at which a bank will issue its draft in the foreign money or will cause credit to become available in the foreign money on a next-day basis.

"State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the United States Virgin Islands. [L 1990, c 50, pt of §1]

" **[\$658B-2] Scope.** (a) This chapter applies only to a foreign-money claim in an action or distribution proceeding.

(b) This chapter applies to foreign-money issues notwithstanding the law applicable under the conflict of laws rules of this State to other issues in the action or distribution proceeding. [L 1990, c 50, pt of §1]

" **[\$658B-3] Variation by agreement.** (a) The effect of provisions of this chapter may be varied by agreement of the parties made at any time before or after commencement of an action, commencement of a distribution proceeding, or the entry of judgment.

(b) The parties may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may use different moneys for different aspects of the transaction. Stating the price in a foreign money or for a particular transaction does not, of itself, require the use of that money for other aspects of the transaction. [L 1990, c 50, pt of §1]

" **[\$658B-4] Determining the money of the claim.** (a) Except as provided by subsection (b), the proper money of the claim is, as in each case may be appropriate, the money:

- (1) Regularly used between the parties as a matter of usage or course of dealing; or
- (2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or
- (3) In which the loss was ultimately felt or will be incurred by a party.

(b) The money in which the parties have contracted that a payment be made is the proper money of the claim for that payment. [L 1990, c 50, pt of §1]

" **[\$658B-5] Determining the amount of the money of certain contract claims.** (a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the exchange rate prevailing on a date prior to default, that exchange rate

applies only for payments made a reasonable time after default, not to exceed thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money must, when received by the creditor, equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator, as the case may be, shall have jurisdiction to and shall, amend the judgment or award accordingly. [L 1990, c 50, pt of §1]

" **[\$658B-6] Asserting and defending a foreign-money claim.**

(a) A claimant may assert a claim in a specified foreign money. If a foreign money is not asserted, the claimant makes a claim for a judgment in United States dollars.

(b) An opposing party may allege and prove that the claim is, in whole or in part, for a different money than that asserted by the claimant.

(c) Any party may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim is a question of law. [L 1990, c 50, pt of §1]

" **[\$658B-7] Judgments and awards on foreign-money claims; times of money conversion; form of judgment.** (a) Except as provided in subsection (c), a judgment or arbitration award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) The judgment or award is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(e) Judgments or awards made in an action on both (1) a defense, set-off, recoupment, or counterclaim and (2) the adverse party's claim, must be netted by converting the money of

the smaller into the money of the larger, and by subtracting the smaller from the larger, and must specify the rates of exchange used.

(f) A judgment substantially in the following form complies with subsection (a):

"IT IS ORDERED AND ADJUDGED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate -- see section 658B-9) per cent a year or, at the option of the judgment debtor, the number of United States dollars as will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars."

(g) If a contract claim is of the type covered by section 658B-5(a) or (b), the judgment or award shall be entered for the amount of the money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars as will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment shall be recorded and indexed in foreign money in the same manner and shall have the same effect as a lien as other judgments. It may be discharged by payment. [L 1990, c 50, pt of §1]

" **[\$658B-8] Conversions of foreign money in a distribution proceeding.** The rate of exchange prevailing at or near the closing of business on the day the proceeding is initiated shall govern all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding must assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated. [L 1990, c 50, pt of §1]

" **[\$658B-9] Prejudgment and judgment interest.** (a) With respect to a foreign-money claim, recovery of prejudgment interest and the rate of interest to be applied in the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict of laws rules of this State.

(b) Notwithstanding subsection (a), an increase or decrease in the amount of prejudgment interest otherwise payable may be made in a foreign-money judgment to the extent required

by the law of this State governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(c) A judgment on a foreign-money claim bears interest at the same rate applicable to other judgments of this State. [L 1990, c 50, pt of §1]

" **[\$658B-10] Enforcement of foreign judgments.** (a) Subject to subsections (b) and (c), if an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this State as enforceable, the enforcing judgment must be entered as provided in section 658B-7 whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this State.

(b) Notwithstanding subsection (a), a foreign judgment may be filed in accordance with any statute of this State providing a procedure for its recognition and enforcement.

(c) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this State in United States dollars only. [L 1990, c 50, pt of §1]

" **[\$658B-11] Temporarily determining the United States dollar value of foreign-money claims for limited purposes.** (a) For the limited purpose of facilitating the enforcement of provisional remedies in an action, (1) the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, (2) the amount of United States dollars at issue for assessing costs, or (3) the amount of United States dollars involved for a surety bond or other court-required undertaking shall be ascertained as provided in subsections (b) and (c).

(b) The party seeking the process, costs, bond, or other undertaking must compute the dollar amount of the foreign money claimed from a bank-offered spot rate of exchange prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(c) The party seeking the process, costs, bond, or other undertaking shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used, how obtained, and setting forth the calculation. Affected court

officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment was in the amount of United States dollars stated in the affidavit or certificate.

(d) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for payment purposes. [L 1990, c 50, pt of §1]

" **[\$658B-12] Effect of currency revalorizations.** (a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator, as the case may be, shall have jurisdiction to, and shall, amend the judgment or award by a like conversion of the former money. [L 1990, c 50, pt of §1]

" **[\$658B-13] Supplementary general principles of law.** Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions. [L 1990, c 50, pt of §1]

" **[\$658B-14] Short title.** This chapter may be cited as the Uniform Foreign-Money Claims Act. [L 1990, c 50, pt of §1]