

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a “notice of suit” shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

(Added Pub. L. 94-583, §4(a), Oct. 21, 1976, 90 Stat. 2894.)

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

(Added Pub. L. 94-583, §4(a), Oct. 21, 1976, 90 Stat. 2895.)

REFERENCES IN TEXT

The time of enactment of this Act, referred to in text, probably means the time of enactment of Pub. L. 94-583, which was approved Oct. 21, 1976.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been

or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

(Added Pub. L. 94-583, § 4(a), Oct. 21, 1976, 90 Stat. 2896; amended Pub. L. 100-640, § 2, Nov. 9, 1988, 102 Stat. 3333; Pub. L. 100-669, § 3, Nov. 16, 1988, 102 Stat. 3969; Pub. L. 101-650, title III, § 325(b)(9), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 104-132, title II, § 221(b), Apr. 24, 1996, 110 Stat. 1242; Pub. L. 105-277, div. A, § 101(h) [title I, § 117(a)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-491; Pub. L. 106-386, div. C, § 2002(g)(1), formerly § 2002(f)(1), Oct. 28, 2000, 114 Stat. 1543, renumbered § 2002(g)(1), Pub. L. 107-297, title II, § 201(c)(3), Nov. 26, 2002, 116 Stat. 2337; Pub. L. 110-181, div. A, title X, § 1083(b)(3), Jan. 28, 2008, 122 Stat. 341; Pub. L. 112-158, title V, § 502(e)(1), Aug. 10, 2012, 126 Stat. 1260.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subssecs. (a) and (b), is 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94-583, set out as an Effective Date note under section 1602 of this title.

The enactment of section 1605A, referred to in subsec. (f)(1)(A), (2)(A), refers to the enactment of Pub. L. 110-181, which was approved Jan. 28, 2008.

The Trading with the Enemy Act, referred to in subsec. (g)(2), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (g)(2), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

AMENDMENTS

2012—Subsec. (a)(7). Pub. L. 112-158, § 502(e)(1)(A), inserted “or section 1605(a)(7) (as such section was in effect on January 27, 2008)” after “section 1605A”.

Subsec. (b)(2). Pub. L. 112-158, § 502(e)(1)(B)(i)(I), substituted “(5) or 1605(b)” for “(5), 1605(b), or 1605A”.

Subsec. (b)(3). Pub. L. 112-158, § 502(e)(1)(B)(i)(II), (ii), added par. (3).

2008—Subsec. (a)(7). Pub. L. 110-181, § 1083(b)(3)(A), substituted “1605A” for “1605(a)(7)”.

Subsec. (b)(2). Pub. L. 110-181, § 1083(b)(3)(B), substituted “or (5), 1605(b), or 1605A” for “(5), or (7), or 1605(b)”.

Subsec. (f)(1)(A), (2)(A). Pub. L. 110-181, § 1083(b)(3)(C), inserted “(as in effect before the enactment of section 1605A) or section 1605A” after “section 1605(a)(7)”.

Subsec. (g). Pub. L. 110-181, § 1083(b)(3)(D), added subsec. (g).

2000—Subsec. (f)(2)(A), (B)(ii). Pub. L. 106-386, § 2002(g)(1)(A), formerly § 2002(f)(1)(A), as renumbered by Pub. L. 107-297, substituted “should make every effort to” for “shall”.

Subsec. (f)(3). Pub. L. 106-386, § 2002(g)(1)(B), formerly § 2002(f)(1)(B), as renumbered by Pub. L. 107-297, added par. (3).

1998—Subsec. (f). Pub. L. 105-277 added subsec. (f).

1996—Subsec. (a)(7). Pub. L. 104-132, § 221(b)(1), added par. (7).

Subsec. (b)(2). Pub. L. 104-132, § 221(b)(2), substituted “(5), or (7),” for “or (5),” and “involved in the act” for “used for the activity”.

1990—Subsecs. (a)(6), (e). Pub. L. 101-650 substituted “state” for “State” after “foreign”.

1988—Subsec. (a)(6). Pub. L. 100-669 added par. (6).

Subsec. (e). Pub. L. 100-640 added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

For applicability of amendments by Pub. L. 110-181 to pending cases, see section 1083(c) of Pub. L. 110-181, set out as an Effective Date note under section 1605A of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. A, § 101(h) [title I, § 117(c)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-491, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1606 of this title] shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 applicable to any case of action arising before, on, or after Apr. 24, 1996, see section 221(c) of Pub. L. 104-132, set out as a note under section 1605 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-640 applicable to actions commenced on or after Nov. 9, 1988, see section 3 of Pub. L. 100-640, set out as a note under section 1605 of this title.

SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM

Pub. L. 107-297, title II, § 201(a), (b), (d), Nov. 26, 2002, 116 Stat. 2337, 2339, as amended by Pub. L. 112-158, title V, § 502(e)(2), Aug. 10, 2012, 126 Stat. 1260, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

“(b) PRESIDENTIAL WAIVER.—

“(1) IN GENERAL.—Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

“(2) EXCEPTION.—A waiver under this subsection shall not apply to—

“(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any nondiplomatic purpose (including use as rental property), or the proceeds of such use; or

“(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

“(d) DEFINITIONS.—In this section, the following definitions shall apply:

“(1) ACT OF TERRORISM.—The term ‘act of terrorism’ means—

“(A) any act or event certified under section 102(1) [Pub. L. 107-297, set out in a note under section 6701 of Title 15, Commerce and Trade]; or

“(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

“(2) BLOCKED ASSET.—The term ‘blocked asset’ means—

“(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

“(B) does not include property that—

“(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

“(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

“(3) CERTAIN PROPERTY.—The term ‘property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations’ and the term ‘asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations’ mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

“(4) TERRORIST PARTY.—The term ‘terrorist party’ means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).”

WAIVER OF EXCEPTION TO IMMUNITY FROM
ATTACHMENT OR EXECUTION

Pub. L. 105-277, div. A, §101(h) [title I, §117(d)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-492, which authorized

the President to waive the requirements of section 101(h) [title I, §117] of Pub. L. 105-277, which amended this section and section 1606 of this title and enacted provisions set out as a note above, in the interest of national security, was repealed by Pub. L. 106-386, div. C, §2002(g)(2), formerly §2002(f)(2), Oct. 28, 2000, 114 Stat. 1543, renumbered §2002(g)(2), Pub. L. 107-297, title II, §201(c)(3), Nov. 26, 2002, 116 Stat. 2337.

Determination of President of the United States, No. 99-1, Oct. 21, 1998, 64 F.R. 59201, which provided for waiver of requirements of section 101(h) [title I, §117(b)] of div. A of Pub. L. 105-277, relating to blocked property of terrorist-list states, was superseded by Determination of President of the United States, No. 2001-3, Oct. 28, 2000, 65 F.R. 66483, set out below.

DETERMINATION TO WAIVE ATTACHMENT PROVISIONS RELATING TO BLOCKED PROPERTY OF TERRORIST-LIST STATES

Determination of President of the United States, No. 2001-3, Oct. 28, 2000, 65 F.R. 66483, provided:

Memorandum for the Secretary of State [and] the Secretary of the Treasury

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2002(f) [now 2002(g)] of H.R. 3244, “Victims of Trafficking and Violence Protection Act of 2000,” (approved October 28, 2000) [section 2002(g) of Pub. L. 106-386, amending this section and section 1606 of this title and repealing provisions set out as a note above], I hereby determine that subsection (f)(1) of section 1610 of title 28, United States Code, which provides that any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), and proclamations, orders, regulations, and licenses issued pursuant thereto, be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state claiming such property is not immune from the jurisdiction of courts of the United States or of the States under section 1605(a)(7) of title 28, United States Code, would impede the ability of the President to conduct foreign policy in the interest of national security and would, in particular, impede the effectiveness of such prohibitions and regulations upon financial transactions. Therefore, pursuant to section 2002(f) [now 2002(g)] of H.R. 3244, the “Victim’s of Trafficking and Violence Protection Act of 2000,” I hereby waive subsection (f)(1) of section 1610 of title 28, United States Code, in the interest of national security. This waiver, together with the amendment of subsection (f)(2) of the Foreign Sovereign Immunities Act [probably means subsec. (f)(2) of this section] and the repeal of the subsection (b) of section 117 of the Treasury and General Government Appropriations Act, 1999 [section 101(h) [title I, §117(b)] of div. A of Pub. L. 105-277, amending section 1606 of this title], supersedes my prior waiver of the requirements of subsections (a) and (b) of said section 117 [amending this section and section 1606 of this title], executed on October 21, 1998 [former Determination of President of the United States, No. 99-1, Oct. 21, 1998, 64 F.R. 59201].

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to