

**UNCITRAL Model Law on Recognition and Enforcement  
of Insolvency-Related Judgments**

## **Decision of the United Nations Commission on International Trade Law (UNCITRAL)**

*The United Nations Commission on International Trade Law,*

*Recalling* General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

*Recognizing* that effective insolvency regimes are increasingly seen as a means of encouraging economic development and investment, as well as fostering entrepreneurial activity and preserving employment,

*Convinced* that the law of recognition and enforcement of judgments is becoming more and more important in a world in which it is increasingly easy for enterprises and individuals have assets in more than one State and to move assets across borders,

*Considering* that international instruments on the recognition and enforcement of judgments in civil and commercial matters exclude insolvency-related judgments from their scope,

*Concerned* that inadequate coordination and cooperation in cases of cross-border insolvency, including uncertainties associated with recognition and enforcement of insolvency-related judgments, can operate as an obstacle to the fair, efficient and effective administration of cross-border insolvencies, reducing the possibility of rescuing financially troubled but viable businesses, making it more likely that the debtor's assets would be concealed or dissipated and hindering reorganizations or liquidations that would be the most advantageous for all interested persons, including the debtors, the debtors' employees and the creditors,

*Convinced* that fair and internationally harmonized legislation on cross-border insolvency that respects national procedural and judicial systems and is acceptable to States with different legal, social and economic systems would contribute to the development of international trade and investment,

*Appreciating* the support for and the participation of international intergovernmental and non-governmental organizations active in the field of insolvency law reform in the development of a draft model law on recognition and enforcement of insolvency-related judgments and its guide to enactment,

*Expressing* its appreciation to Working Group V (Insolvency Law) for its work in developing the draft model law on recognition and enforcement of insolvency-related judgments and its guide to enactment,

1. *Adopts* the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments, as it appears in annex II to the report of the fifty-first session of the Commission, and its Guide to Enactment, consisting of the text set forth in [A/CN.9/WG.V/WP.157](#) with the amendments listed in document [A/CN.9/955](#) and further amendments adopted by the Commission at its fifty-first session;

2. *Requests* the Secretary-General to publish the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and the Guide to Enactment, including electronically, in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies;

3. *Recommends* that all States give favourable consideration to the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments when revising or adopting legislation relevant to insolvency and invites States that have used the Model Law to advise the Commission accordingly; and

4. *Recommends* also that all States continue to consider implementation of the UNCITRAL Model Law on Cross-Border Insolvency (1997).

*1080th meeting*

*2 July 2018*

# UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments

## Preamble

1. The purpose of this Law is:
  - (a) To create greater certainty in regard to rights and remedies for recognition and enforcement of insolvency-related judgments;
  - (b) To avoid the duplication of insolvency proceedings;
  - (c) To ensure timely and cost-effective recognition and enforcement of insolvency-related judgments;
  - (d) To promote comity and cooperation between jurisdictions regarding insolvency-related judgments;
  - (e) To protect and maximize the value of insolvency estates; and
  - (f) Where legislation based on the UNCITRAL Model Law on Cross-Border Insolvency has been enacted, to complement that legislation.
2. This Law is not intended:
  - (a) To restrict provisions of the law of this State that would permit the recognition and enforcement of an insolvency-related judgment;
  - (b) To replace legislation enacting the UNCITRAL Model Law on Cross-Border Insolvency or limit the application of that legislation;
  - (c) To apply to the recognition and enforcement in the enacting State of an insolvency-related judgment issued in the enacting State; or
  - (d) To apply to the judgment commencing the insolvency proceeding.

## Article 1. Scope of application

1. This Law applies to the recognition and enforcement of an insolvency-related judgment issued in a State that is different to the State in which recognition and enforcement is sought.
2. This Law does not apply to [...].

## Article 2. Definitions

For the purposes of this Law:

- (a) “Insolvency proceeding” means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of a debtor are or were subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;
- (b) “Insolvency representative” means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the insolvency proceeding;
- (c) “Judgment” means any decision, whatever it may be called, issued by a court or administrative authority, provided an administrative decision has the same effect as a court decision. For the purposes of this definition, a decision includes a decree or order, and a determination of costs and expenses. An interim measure of protection is not to be considered a judgment for the purposes of this Law;

- (d) “Insolvency-related judgment”:
- (i) Means a judgment that:
    - a. Arises as a consequence of or is materially associated with an insolvency proceeding, whether or not that insolvency proceeding has closed; and
    - b. Was issued on or after the commencement of that insolvency proceeding; and
  - (ii) Does not include a judgment commencing an insolvency proceeding.

### **Article 3. International obligations of this State**

1. To the extent that this Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.
2. This Law shall not apply to a judgment where there is a treaty in force concerning the recognition or enforcement of civil and commercial judgments, and that treaty applies to the judgment.

### **Article 4. Competent court or authority**

The functions referred to in this Law relating to recognition and enforcement of an insolvency-related judgment shall be performed by [*specify the court, courts, authority or authorities competent to perform those functions in the enacting State*] and by any other court before which the issue of recognition is raised as a defence or as an incidental question.

### **Article 5. Authorization to act in another State in respect of an insolvency-related judgment issued in this State**

A [*insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State*] is authorized to act in another State with respect to an insolvency-related judgment issued in this State, as permitted by the applicable foreign law.

### **Article 6. Additional assistance under other laws**

Nothing in this Law limits the power of a court or a [*insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State*] to provide additional assistance under other laws of this State.

### **Article 7. Public policy exception**

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy, including the fundamental principles of procedural fairness, of this State.

### **Article 8. Interpretation**

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

### **Article 9. Effect and enforceability of an insolvency-related judgment**

An insolvency-related judgment shall be recognized only if it has effect in the originating State and shall be enforced only if it is enforceable in the originating State.

### **Article 10. Effect of review in the originating State on recognition and enforcement**

1. Recognition or enforcement of an insolvency-related judgment may be postponed or refused if the judgment is the subject of review in the originating State or if the time limit for seeking ordinary review in that State has not expired. In such cases, the court may also make recognition or enforcement conditional on the provision of such security as it shall determine.

2. A refusal under paragraph 1 does not prevent a subsequent application for recognition or enforcement of the judgment.

#### **Article 11. Procedure for seeking recognition and enforcement of an insolvency-related judgment**

1. An insolvency representative or other person entitled under the law of the originating State to seek recognition and enforcement of an insolvency-related judgment may seek recognition and enforcement of that judgment in this State. The issue of recognition may also be raised as a defence or as an incidental question.

2. When recognition and enforcement of an insolvency-related judgment is sought under paragraph 1, the following shall be submitted to the court:

(a) A certified copy of the insolvency-related judgment; and

(b) Any documents necessary to establish that the insolvency-related judgment has effect and, where applicable, is enforceable in the originating State, including information on any pending review of the judgment; or

(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence on those matters acceptable to the court.

3. The court may require translation of documents submitted pursuant to paragraph 2 into an official language of this State.

4. The court is entitled to presume that documents submitted pursuant to paragraph 2 are authentic, whether or not they have been legalized.

5. Any party against whom recognition and enforcement is sought has the right to be heard.

#### **Article 12. Provisional relief**

1. From the time recognition and enforcement of an insolvency-related judgment is sought until a decision is made, where relief is urgently needed to preserve the possibility of recognizing and enforcing an insolvency-related judgment, the court may, at the request of an insolvency representative or other person entitled to seek recognition and enforcement under article 11, paragraph 1, grant relief of a provisional nature, including:

(a) Staying the disposition of any assets of any party or parties against whom the insolvency-related judgment has been issued; or

(b) Granting other legal or equitable relief, as appropriate, within the scope of the insolvency-related judgment.

2. *[Insert provisions (or refer to provisions in force in the enacting State) relating to notice, including whether notice would be required under this article.]*

3. Unless extended by the court, relief granted under this article terminates when a decision on recognition and enforcement of the insolvency-related judgment is made.

#### **Article 13. Decision to recognize and enforce an insolvency-related judgment**

Subject to articles 7 and 14, an insolvency-related judgment shall be recognized and enforced provided:

(a) The requirements of article 9 with respect to effect and enforceability are met;

(b) The person seeking recognition and enforcement of the insolvency-related judgment is an insolvency representative within the meaning of article 2, subparagraph (b), or another person entitled to seek recognition and enforcement of the judgment under article 11, paragraph 1;

(c) The application meets the requirements of article 11, paragraph 2; and

(d) Recognition and enforcement is sought from a court referred to in article 4, or the question of recognition arises by way of defence or as an incidental question before such a court.

**Article 14. Grounds to refuse recognition and enforcement of an insolvency-related judgment**

In addition to the ground set forth in article 7, recognition and enforcement of an insolvency-related judgment may be refused if:

- (a) The party against whom the proceeding giving rise to the judgment was instituted:
  - (i) Was not notified of the institution of that proceeding in sufficient time and in such a manner as to enable a defence to be arranged, unless the party entered an appearance and presented their case without contesting notification in the originating court, provided that the law of the originating State permitted notification to be contested; or
  - (ii) Was notified in this State of the institution of that proceeding in a manner that is incompatible with the rules of this State concerning service of documents;
- (b) The judgment was obtained by fraud;
- (c) The judgment is inconsistent with a judgment issued in this State in a dispute involving the same parties;
- (d) The judgment is inconsistent with an earlier judgment issued in another State in a dispute involving the same parties on the same subject matter, provided the earlier judgment fulfils the conditions necessary for its recognition and enforcement in this State;
- (e) Recognition and enforcement would interfere with the administration of the debtor's insolvency proceedings, including by conflicting with a stay or other order that could be recognized or enforced in this State;
- (f) The judgment:
  - (i) Materially affects the rights of creditors generally, such as determining whether a plan of reorganization or liquidation should be confirmed, a discharge of the debtor or of debts should be granted or a voluntary or out-of-court restructuring agreement should be approved; and
  - (ii) The interests of creditors and other interested persons, including the debtor, were not adequately protected in the proceeding in which the judgment was issued;
- (g) The originating court did not satisfy one of the following conditions:
  - (i) The court exercised jurisdiction on the basis of the explicit consent of the party against whom the judgment was issued;
  - (ii) The court exercised jurisdiction on the basis of the submission of the party against whom the judgment was issued, namely that that party argued on the merits before the court without objecting to jurisdiction or to the exercise of jurisdiction within the time frame provided in the law of the originating State, unless it was evident that such an objection to jurisdiction would not have succeeded under that law;
  - (iii) The court exercised jurisdiction on a basis on which a court in this State could have exercised jurisdiction; or
  - (iv) The court exercised jurisdiction on a basis that was not incompatible with the law of this State;

*[States that have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency might wish to enact subparagraph (h).]*

(h) The judgment originates from a State whose insolvency proceeding is not or would not be recognizable under *[insert a reference to the law of the enacting State giving effect to the UNCITRAL Model Law on Cross-Border Insolvency]*, unless:

- (i) The insolvency representative of a proceeding that is or could have been recognized under [*insert a reference to the law of the enacting State giving effect to the UNCITRAL Model Law on Cross-Border Insolvency*] participated in the proceeding in the originating State to the extent of engaging in the substantive merits of the cause of action to which that proceeding related; and
- (ii) The judgment relates solely to assets that were located in the originating State at the time the proceeding in the originating State commenced.

#### **Article 15. Equivalent effect**

1. An insolvency-related judgment recognized or enforceable under this Law shall be given the same effect it [has in the originating State] or [would have had if it had been issued by a court of this State].<sup>1</sup>
2. If the insolvency-related judgment provides for relief that is not available under the law of this State, that relief shall, to the extent possible, be adapted to relief that is equivalent to, but does not exceed, its effects under the law of the originating State.

#### **Article 16. Severability**

Recognition and enforcement of a severable part of an insolvency-related judgment shall be granted where recognition and enforcement of that part is sought, or where only that part of the judgment is capable of being recognized and enforced under this Law.

*[States that have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency will be aware of judgments that may have cast doubt on whether judgments can be recognized and enforced under article 21 of that Model Law. States may therefore wish to consider enacting the following provision:]*

**Article X. Recognition of an insolvency-related judgment under** [*insert a cross-reference to the legislation of this State enacting article 21 of the UNCITRAL Model Law on Cross-Border Insolvency*]

Notwithstanding any prior interpretation to the contrary, the relief available under [*insert a cross-reference to the legislation of this State enacting article 21 of the UNCITRAL Model Law on Cross-Border Insolvency*] includes recognition and enforcement of a judgment.

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<sup>1</sup> The enacting State may wish to note that it should choose between the two alternatives provided in square brackets. An explanation of this provision is provided in the Guide to Enactment in the notes to article 15.

