

2008

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Cross-Border Insolvency Bill 2008

No. , 2008

(Superannuation and Corporate Law)

**A Bill for an Act to give effect to the Model Law on
Cross-Border Insolvency of the United Nations
Commission on International Trade Law, and for
related purposes**

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1 **A Bill for an Act to give effect to the Model Law on**
2 **Cross-Border Insolvency of the United Nations**
3 **Commission on International Trade Law, and for**
4 **related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *Cross-Border Insolvency Act 2008*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Parts 2, 3 and 4	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1	At the same time as the provision(s) covered by table item 2.	

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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3 Crown to be bound

This Act binds the Crown in each of its capacities.

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Part 2—Model Law on Cross-Border Insolvency

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5 Definitions

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(1) In this Act:

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Australia does not include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.

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8

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, set out in the Annex to United Nations General Assembly Resolution A/RES/52/158 (1997), the English text of which is set out in Schedule 1 to this Act.

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Note: In 2008, the text of United Nations General Assembly Resolutions was accessible through the United Nations Internet site (www.un.org).

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(2) An expression that is used in both this Act and the Model Law (whether or not a particular meaning is given to it by the Model Law) has, in this Act, the same meaning as in the Model Law.

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6 Model Law to have force of law in Australia

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Subject to this Act, the Model Law, with the modifications set out in this Part, has the force of law in Australia.

21

7 References in Model Law to this State

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(1) In the Model Law (as it has the force of law in Australia), a reference to this State is a reference to Australia.

24

25

Note: See also section 19 for references to laws/law of this State and court of this State.

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(2) If, because of subsection (1), the Model Law refers to Australia in a geographical sense, the reference does not include an external Territory.

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Note: Paragraph 17(a) of the *Acts Interpretation Act 1901* would otherwise provide that *Australia* includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

1 **8 Identifying Australian laws relating to insolvency**

2 The Model Law has the force of law in Australia as if the Model
3 Law referred to:
4 (a) the *Bankruptcy Act 1966*; and
5 (b) Chapter 5 (other than Parts 5.2 and 5.4A), and
6 section 601CL, of the *Corporations Act 2001*;
7 wherever the Model Law provides that the laws of the enacting
8 State relating to insolvency are to be identified.

9 **9 Entities that are not covered by the Model Law**

10 Entities prescribed by the regulations are designated for the
11 purposes of paragraph 2 of Article 1 of the Model Law (as it has
12 the force of law in Australia).

13 Note 1: The effect of prescribing an entity is that the Model Law does not
14 apply to it.

15 Note 2: The regulations may prescribe the entity by reference to a class. See
16 subsection 13(3) of the *Legislative Instruments Act 2003*.

17 **10 Courts competent to perform functions under Model Law**

18 The following courts are taken to be specified in Article 4 of the
19 Model Law (as it has the force of law in Australia) as courts
20 competent to perform the functions referred to in the Model Law
21 relating to recognition of foreign proceedings and cooperation with
22 foreign courts:

- 23 (a) if the functions relate to a proceeding involving a debtor who
24 is an individual—the Federal Court of Australia;
25 (b) if the functions relate to a proceeding involving a debtor
26 other than an individual:
27 (i) the Federal Court of Australia; and
28 (ii) the Supreme Court of a State or Territory.

29 Note: References in the Model Law to a court or the court are, because of
30 this section, to be read as references to the Federal Court of Australia
31 or the Supreme Court of a State or Territory.

1 **11 Functions of the trustee (in bankruptcy proceedings) and the**
2 **registered liquidator (in corporate insolvencies)**

3 The Model Law has the force of law in Australia as if the Model
4 Law referred to whichever of the following is appropriate:

- 5 (a) the trustee (within the meaning of subsection 5(1) of the
6 *Bankruptcy Act 1966*);
7 (b) a registered liquidator (within the meaning of section 9 of the
8 *Corporations Act 2001*);

9 wherever the Model Law indicates that the title of the person or
10 body administering a reorganization or liquidation under the law of
11 the enacting State is to be inserted.

12 **12 Access of foreign creditors to Australian insolvency proceedings**

13 (1) For the purposes of Article 13 of the Model Law (as it has the force
14 of law in Australia), the alternative wording set out in footnote 2 to
15 the Model Law replaces paragraph 2 of that Article.

16 (2) For the purposes of the replacement paragraph, the claims of
17 foreign creditors, other than those concerning tax and social
18 security obligations, must not be ranked lower than the unsecured
19 claims of other creditors solely because the creditor concerned is a
20 foreign creditor.

21 **13 Application for recognition of foreign proceeding**

22 In addition to the requirement in paragraph 3 of Article 15 of the
23 Model Law (as it has the force of law in Australia) that an
24 application for recognition be accompanied by a statement
25 identifying all foreign proceedings in respect of the debtor that are
26 known to the foreign representative, the application must be
27 accompanied by a statement identifying:

- 28 (a) all proceedings under the *Bankruptcy Act 1966* in respect of
29 the debtor; and
30 (b) any appointment of a receiver (within the meaning of
31 section 416 of the *Corporations Act 2001*), or a controller or
32 a managing controller (both within the meaning of section 9
33 of that Act), in relation to the property of the debtor; and

1 (c) all proceedings under Chapter 5, or section 601CL, of the
2 *Corporations Act 2001* in respect of the debtor;
3 that are known to the foreign representative.

4 **14 Subsequent information**

5 In addition to the requirement in subparagraph (b) of Article 18 of
6 the Model Law (as it has the force of law in Australia) that the
7 foreign representative inform the court promptly of any other
8 foreign proceeding that becomes known to the foreign
9 representative, the foreign representative must inform the court
10 promptly of:

- 11 (a) any proceeding under the *Bankruptcy Act 1966* regarding the
12 same debtor; and
13 (b) any appointment of a receiver (within the meaning of
14 section 416 of the *Corporations Act 2001*), or a controller or
15 a managing controller (both within the meaning of section 9
16 of that Act), in relation to the property of the same debtor;
17 and
18 (c) any proceeding under Chapter 5, or section 601CL, of the
19 *Corporations Act 2001* regarding the same debtor;
20 that becomes known to the foreign representative.

21 **15 Relief that may be granted upon application for recognition of a** 22 **foreign proceeding**

23 To avoid doubt, no provisions are inserted or referred to in
24 paragraph 2 of Article 19 of the Model Law (as it has the force of
25 law in Australia).

26 **16 Effects of recognition of a foreign main proceeding**

27 For the purposes of paragraph 2 of Article 20 of the Model Law (as
28 it has the force of law in Australia), the scope and the modification
29 or termination of the stay or suspension referred to in paragraph 1
30 of that Article, are the same as would apply if the stay or
31 suspension arose under:

- 32 (a) the *Bankruptcy Act 1966*; or

1 (b) Chapter 5 (other than Parts 5.2 and 5.4A) of the *Corporations*
2 *Act 2001*;
3 as the case requires.

4 **17 Actions to avoid acts detrimental to creditors**

5 (1) The actions referred to for the purposes of paragraph 1 of Article
6 23 of the Model Law (as it has the force of law in Australia) are
7 actions arising under or because of:

8 (a) section 120, 121, 121A, 122, 128B or 128C or Division 4A
9 of Part VI of the *Bankruptcy Act 1966*; or

10 (b) Division 2 of Part 5.7B of the *Corporations Act 2001*.

11 (2) A provision referred to in paragraph (1)(a) or (b) applies, with
12 appropriate changes, in relation to an action for the purposes of a
13 foreign proceeding in the same way it would apply if the action
14 were for the purposes of a proceeding in relation to:

15 (a) a bankrupt (within the meaning of subsection 5(1) of the
16 *Bankruptcy Act 1966*); or

17 (b) a company (within the meaning of section 9 of the
18 *Corporations Act 2001*);

19 as the case requires.

20 **18 Forms of cooperation**

21 To avoid doubt, no additional forms or examples of cooperation
22 are added by subparagraph (f) of Article 27 of the Model Law (as it
23 has the force of law in Australia).

24 **19 References to laws/law of this State and courts of this State**

25 *Laws/law of this State*

26 (1) A reference in Article 7 of the Model Law (as it has the force of
27 law in Australia) to laws of this State is a reference to the following
28 laws:

29 (a) a law of the Commonwealth;

30 (b) a law of a State;

31 (c) a law of a Territory (other than an external Territory).

- 1 (2) A reference in Article 21 of the Model Law (as it has the force of
2 law in Australia) to the laws of this State is a reference to a law of
3 the Commonwealth.
- 4 (3) A reference in Articles 14, 21, 23, 28 and 29 of the Model Law (as
5 it has the force of law in Australia) to the law of this State is a
6 reference to a law of the Commonwealth.
- 7 (4) A reference in Article 24 of the Model Law (as it has the force of
8 law in Australia) to the law of this State is a reference to the
9 following laws:
- 10 (a) a law of the Commonwealth;
11 (b) a law of a State;
12 (c) a law of a Territory (other than an external Territory).

13 *Courts of this State*

- 14 (5) A reference in Article 10 of the Model Law (as it has the force of
15 law in Australia) to the courts of this State is a reference to the
16 following courts:
- 17 (a) a federal court;
18 (b) a court of a State;
19 (c) a court of a Territory (other than an external Territory).

20 **20 Application**

- 21 (1) This Act applies to proceedings under:
- 22 (a) the *Bankruptcy Act 1966*; or
23 (b) Chapter 5 (other than Parts 5.2 and 5.4A), and
24 section 601CL, of the *Corporations Act 2001*;
25 commenced before, on or after the commencement of this Part.
- 26 (2) This Act applies to foreign proceedings commenced on or after the
27 commencement of this Part.

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Part 3—Interaction with other Acts

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21 Interaction with the *Bankruptcy Act 1966*

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If the Model Law (as it has the force of law in Australia) or a provision of this Act is inconsistent with section 29 of the *Bankruptcy Act 1966*, the Model Law or the provision of this Act prevails, and that section has no effect to the extent of the inconsistency.

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22 Interaction with the *Corporations Act 2001*

11

(1) If the Model Law (as it has the force of law in Australia) or a provision of this Act is inconsistent with a provision of:

12

13

(a) Division 9 of Part 5.6 of the *Corporations Act 2001*; or

14

(b) Part 5.7 of the *Corporations Act 2001*;

15

the Model Law or the provision of this Act prevails, and the provision of the *Corporations Act 2001* has no effect to the extent of the inconsistency.

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(2) The Model Law (as it has the force of law in Australia) and this Act, are in addition to, and not in derogation of, section 601CL of the *Corporations Act 2001*.

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Part 4—Regulations

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23 Regulations

5

The Governor-General may make regulations prescribing matters:

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(a) required or permitted by this Act to be prescribed; or

7

(b) necessary or convenient to be prescribed for carrying out or

8

giving effect to this Act.

1 (c) A foreign proceeding and a proceeding under [*identify laws of the*
2 *enacting State relating to insolvency*] in respect of the same debtor are taking
3 place concurrently; or
4

5 (d) Creditors or other interested persons in a foreign State have an
6 interest in requesting the commencement of, or participation in, a proceeding
7 under [*identify laws of the enacting State relating to insolvency*].
8

9 2. The present Law does not apply to a proceeding concerning [*designate*
10 *any types of entities, such as banks or insurance companies, that are subject to*
11 *a special insolvency regime in this State and that this State wishes to exclude*
12 *from the present Law*].

13 *Article 2*

14 *Definitions*

15
16 For the purposes of the present Law:

17 (a) “Foreign proceeding” means a collective judicial or administrative
18 proceeding in a foreign State, including an interim proceeding, pursuant to a
19 law relating to insolvency in which proceeding the assets and affairs of the
20 debtor are subject to control or supervision by a foreign court, for the purpose of
21 reorganization or liquidation;
22

23 (b) “Foreign main proceeding” means a foreign proceeding taking
24 place in the State where the debtor has the centre of its main interests;
25

26 (c) “Foreign non-main proceeding” means a foreign proceeding, other
27 than a foreign main proceeding, taking place in a State where the debtor has an
28 establishment within the meaning of subparagraph (f) of the present article;
29

30 (d) “Foreign representative” means a person or body, including one
31 appointed on an interim basis, authorized in a foreign proceeding to administer
32 the reorganization or the liquidation of the debtor’s assets or affairs or to act as
33 a representative of the foreign proceeding;
34

35 (e) “Foreign court” means a judicial or other authority competent to
36 control or supervise a foreign proceeding;
37

1 (f) “Establishment” means any place of operations where the debtor
2 carries out a non-transitory economic activity with human means and goods or
3 services.
4

5 *Article 3*

6 *International obligations of this State*

7 To the extent that the present Law conflicts with an obligation of this
8 State arising out of any treaty or other form of agreement to which it is a party
9 with one or more other States, the requirements of the treaty or agreement
10 prevail.

11 *Article 4*

12 [*Competent court or authority*]¹

13 The functions referred to in the present Law relating to recognition of
14 foreign proceedings and cooperation with foreign courts shall be performed by
15 [*specify the court, courts, authority or authorities competent to perform those*
16 *functions in the enacting State*].

17 *Article 5*

18 *Authorization of* [insert the title of the person or body
19 administering a reorganization or liquidation under the
20 law of the enacting State] *to act in a foreign State*

21 A [insert the title of the person or body administering a reorganization
22 or liquidation under the law of the enacting State] is authorized to act in a
23 foreign State on behalf of a proceeding under [identify laws of the enacting
24 State relating to insolvency], as permitted by the applicable foreign law.

¹ A State where certain functions relating to insolvency proceedings have been conferred upon government-appointed officials or bodies might wish to include in article 4 or elsewhere in chapter I the following provision:

“Nothing in the present Law affects the provisions in force in this State governing the authority of [insert the title of the government-appointed person or body].”

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Article 6

Public policy exception

Nothing in the present Law prevents the court from refusing to take an action governed by the present Law if the action would be manifestly contrary to the public policy of this State.

Article 7

Additional assistance under other laws

Nothing in the present 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 to a foreign representative under other laws of this State.

Article 8

Interpretation

In the interpretation of the present 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.

CHAPTER II. ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THIS STATE

Article 9

Right of direct access

A foreign representative is entitled to apply directly to a court in this State.

Article 10

Limited jurisdiction

1 (c) Contain any other information required to be included in such a
2 notification to creditors pursuant to the law of this State and the orders of the
3 court.

4 CHAPTER III. RECOGNITION OF A FOREIGN PROCEEDING AND
5 RELIEF

6 *Article 15*

7 *Application for recognition of a foreign proceeding*
8

9 1. A foreign representative may apply to the court for recognition of the
10 foreign proceeding in which the foreign representative has been appointed.

11 2. An application for recognition shall be accompanied by:
12

13 (a) A certified copy of the decision commencing the foreign
14 proceeding and appointing the foreign representative; or
15

16 (b) A certificate from the foreign court affirming the existence of the
17 foreign proceeding and of the appointment of the foreign representative; or
18

19 (c) In the absence of evidence referred to in subparagraphs (a) and (b),
20 any other evidence acceptable to the court of the existence of the foreign
21 proceeding and of the appointment of the foreign representative.
22

23 3. An application for recognition shall also be accompanied by a statement
24 identifying all foreign proceedings in respect of the debtor that are known to the
25 foreign representative.
26

27 4. The court may require a translation of documents supplied in support of
28 the application for recognition into an official language of this State.
29
30

31 *Article 16*

32 *Presumptions concerning recognition*
33

1 1. If the decision or certificate referred to in paragraph 2 of article 15
2 indicates that the foreign proceeding is a proceeding within the meaning of
3 subparagraph (a) of article 2 and that the foreign representative is a person or
4 body within the meaning of subparagraph (d) of article 2, the court is entitled to
5 so presume.
6

7 2. The court is entitled to presume that documents submitted in support of
8 the application for recognition are authentic, whether or not they have been
9 legalized.
10

11 3. In the absence of proof to the contrary, the debtor's registered office, or
12 habitual residence in the case of an individual, is presumed to be the centre of
13 the debtor's main interests.
14

15 *Article 17*

16 *Decision to recognize a foreign proceeding*

17 1. Subject to article 6, a foreign proceeding shall be recognized if:

18 (a) The foreign proceeding is a proceeding within the meaning of
19 subparagraph (a) of article 2;

20 (b) The foreign representative applying for recognition is a person or
21 body within the meaning of subparagraph (d) of article 2;

22 (c) The application meets the requirements of paragraph 2 of article 15;

23 (d) The application has been submitted to the court referred to in article
24

25 4.
26

27
28 2. The foreign proceeding shall be recognized:

29 (a) As a foreign main proceeding if it is taking place in the State where
30 the debtor has the centre of its main interests; or
31

32 (b) As a foreign non-main proceeding if the debtor has an
33 establishment within the meaning of subparagraph (f) of article 2 in the foreign
34 State.
35

1 3. An application for recognition of a foreign proceeding shall be decided
2 upon at the earliest possible time.

3
4 4. The provisions of articles 15, 16, 17 and 18 do not prevent modification
5 or termination of recognition if it is shown that the grounds for granting it were
6 fully or partially lacking or have ceased to exist.
7

8 *Article 18*

9 *Subsequent information*

10 From the time of filing the application for recognition of the foreign
11 proceeding, the foreign representative shall inform the court promptly of:

12 (a) Any substantial change in the status of the recognized foreign
13 proceeding or the status of the foreign representative's appointment;

14
15 (b) Any other foreign proceeding regarding the same debtor that
16 becomes known to the foreign representative.
17

18 *Article 19*

19
20 *Relief that may be granted upon application for recognition*
21 *of a foreign proceeding*

22 1. From the time of filing an application for recognition until the
23 application is decided upon, the court may, at the request of the foreign
24 representative, where relief is urgently needed to protect the assets of the debtor
25 or the interests of the creditors, grant relief of a provisional nature, including:

26 (a) Staying execution against the debtor's assets;

27 (b) Entrusting the administration or realization of all or part of the debtor's
28 assets located in this State to the foreign representative or another person
29 designated by the court, in order to protect and preserve the value of assets that,
30 by their nature or because of other circumstances, are perishable, susceptible to
31 devaluation or otherwise in jeopardy;

32 (c) Any relief mentioned in paragraph 1 (c), (d) and (g) of article 21
33 below.

1 2. [Insert provisions (or refer to provisions in force in the enacting State)
2 relating to notice.]

3
4 3. Unless extended under paragraph 1 (f) of article 21, the relief granted
5 under the present article terminates when the application for recognition is
6 decided upon.

7
8 4. The court may refuse to grant relief under the present article if such
9 relief would interfere with the administration of a foreign main proceeding.

10
11

Article 20

12

Effects of recognition of a foreign main proceeding

13 1. Upon recognition of a foreign proceeding that is a foreign main
14 proceeding:

15 (a) Commencement or continuation of individual actions or individual
16 proceedings concerning the debtor's assets, rights, obligations or liabilities is
17 stayed;

18 (b) Execution against the debtor's assets is stayed;

19

20 (c) The right to transfer, encumber or otherwise dispose of any assets
21 of the debtor is suspended.

22

23 2. The scope, and the modification or termination, of the stay and
24 suspension referred to in paragraph 1 of the present article are subject to [*refer*
25 *to any provisions of law of the enacting State relating to insolvency that apply*
26 *to exceptions, limitations, modifications or termination in respect of the stay*
27 *and suspension referred to in paragraph 1 of the present article*].

28

29 3. Paragraph 1 (a) of the present article does not affect the right to
30 commence individual actions or proceedings to the extent necessary to preserve
31 a claim against the debtor.

32

33 4. Paragraph 1 of the present article does not affect the right to request the
34 commencement of a proceeding under [*identify laws of the enacting State*
35 *relating to insolvency*] or the right to file claims in such a proceeding.

36

37

Article 21

1 3. In granting relief under the present article to a representative of a
2 foreign non-main proceeding, the court must be satisfied that the relief relates to
3 assets that, under the law of this State, should be administered in the foreign
4 non-main proceeding or concerns information required in that proceeding.

5
6 *Article 22*

7 *Protection of creditors and other interested persons*

8 1. In granting or denying relief under article 19 or 21, or in modifying or
9 terminating relief under paragraph 3 of the present article, the court must be
10 satisfied that the interests of the creditors and other interested persons, including
11 the debtor, are adequately protected.

12
13 2. The court may subject relief granted under article 19 or 21 to conditions
14 it considers appropriate.

15
16 3. The court may, at the request of the foreign representative or a person
17 affected by relief granted under article 19 or 21, or at its own motion, modify or
18 terminate such relief.

19
20 *Article 23*

21 *Actions to avoid acts detrimental to creditors*

22 1. Upon recognition of a foreign proceeding, the foreign representative has
23 standing to initiate [*refer to the types of actions to avoid or otherwise render*
24 *ineffective acts detrimental to creditors that are available in this State to a*
25 *person or body administering a reorganization or liquidation*].

26
27 2. When the foreign proceeding is a foreign non-main proceeding, the
28 court must be satisfied that the action relates to assets that, under the law of this
29 State, should be administered in the foreign non-main proceeding.

30
31 *Article 24*

32 *Intervention by a foreign representative in proceedings*
33 *in this State*

34 Upon recognition of a foreign proceeding, the foreign representative
35 may, provided the requirements of the law of this State are met, intervene in any

1 proceedings in which the debtor is a party.
2

3 CHAPTER IV. COOPERATION WITH FOREIGN COURTS AND
4 FOREIGN REPRESENTATIVES

5
6 *Article 25*

7
8 *Cooperation and direct communication between a court of this*
9 *State and foreign courts or foreign representatives*

10
11 1. In matters referred to in article 1, the court shall cooperate to the
12 maximum extent possible with foreign courts or foreign representatives, either
13 directly or through a *[insert the title of a person or body administering a*
14 *reorganization or liquidation under the law of the enacting State]*.

15
16 2. The court is entitled to communicate directly with, or to request
17 information or assistance directly from, foreign courts or foreign
18 representatives.

19
20 *Article 26*

21 *Cooperation and direct communication between the [insert the*
22 *title of a person or body administering a reorganization or*
23 *liquidation under the law of the enacting State] and foreign*
24 *courts or foreign representatives*

25 1. In matters referred to in article 1, a *[insert the title of a person or body*
26 *administering a reorganization or liquidation under the law of the enacting*
27 *State]* shall, in the exercise of its functions and subject to the supervision of the
28 court, cooperate to the maximum extent possible with foreign courts or foreign
29 representatives.

30
31 2. The *[insert the title of a person or body administering a reorganization*
32 *or liquidation under the law of the enacting State]* is entitled, in the exercise of
33 its functions and subject to the supervision of the court, to communicate directly
34 with foreign courts or foreign representatives.

35
36 *Article 27*

37 *Forms of cooperation*

1 Cooperation referred to in articles 25 and 26 may be implemented by
2 any appropriate means, including:

3 (a) Appointment of a person or body to act at the direction of the court;

4
5 (b) Communication of information by any means considered
6 appropriate by the court;

7
8 (c) Coordination of the administration and supervision of the debtor's
9 assets and affairs;

10
11 (d) Approval or implementation by courts of agreements concerning
12 the coordination of proceedings;

13
14 (e) Coordination of concurrent proceedings regarding the same debtor;

15
16 (f) [*The enacting State may wish to list additional forms or examples of*
17 *cooperation*].

18
19
20 CHAPTER V. CONCURRENT PROCEEDINGS

21 *Article 28*

22 *Commencement of a proceeding under [identify laws of the*
23 *enacting State relating to insolvency] after recognition*
24 *of a foreign main proceeding*

25 After recognition of a foreign main proceeding, a proceeding under
26 [*identify laws of the enacting State relating to insolvency*] may be commenced
27 only if the debtor has assets in this State; the effects of that proceeding shall be
28 restricted to the assets of the debtor that are located in this State and, to the
29 extent necessary to implement cooperation and coordination under articles 25,
30 26 and 27, to other assets of the debtor that, under the law of this State, should
31 be administered in that proceeding.

32 *Article 29*

33 *Coordination of a proceeding under [identify laws of the enacting*
34 *State relating to insolvency] and a foreign proceeding*

1 (a) Any relief granted under article 19 or 21 to a representative of a
2 foreign non-main proceeding after recognition of a foreign main proceeding
3 must be consistent with the foreign main proceeding;
4

5 (b) If a foreign main proceeding is recognized after recognition, or
6 after the filing of an application for recognition, of a foreign non-main
7 proceeding, any relief in effect under article 19 or 21 shall be reviewed by the
8 court and shall be modified or terminated if inconsistent with the foreign main
9 proceeding;
10

11 (c) If, after recognition of a foreign non-main proceeding, another
12 foreign non-main proceeding is recognized, the court shall grant, modify or
13 terminate relief for the purpose of facilitating coordination of the proceedings.
14

15 *Article 31*

16 *Presumption of insolvency based on recognition of a foreign* 17 *main proceeding*

18 In the absence of evidence to the contrary, recognition of a foreign main
19 proceeding is, for the purpose of commencing a proceeding under [*identify laws*
20 *of the enacting State relating to insolvency*], proof that the debtor is insolvent.

21 *Article 32*

22 *Rule of payment in concurrent proceedings*

23 Without prejudice to secured claims or rights *in rem*, a creditor who has
24 received part payment in respect of its claim in a proceeding pursuant to a law
25 relating to insolvency in a foreign State may not receive a payment for the same
26 claim in a proceeding under [*identify laws of the enacting State relating to*
27 *insolvency*] regarding the same debtor, so long as the payment to the other
28 creditors of the same class is proportionately less than the payment the creditor
29 has already received.

