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CROSS-BORDER INSOLVENCY

Revised articles of the draft UNCITRAL Model Legislative Provisions on Cross-Border Insolvency

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I. INTRODUCTION

1. At the present session, the Working Group on Insolvency Law continues its work, undertaken pursuant to a decision taken by the Commission at its twenty-eighth session (Vienna, 2-26 May 1995) on the development of a legal instrument relating to cross-border insolvency.¹ This is the third session that the Working Group is devoting to the preparation of that instrument, tentatively entitled the draft UNCITRAL Model Legislative Provisions on Cross-Border Insolvency.²

2. The Commission's decision to undertake work on cross-border insolvency was taken in response to suggestions made to it by practitioners directly concerned with the problem, in particular at the UNCITRAL Congress, "Uniform Commercial Law in the 21st Century", held in New York in conjunction with the twenty-fifth session of the Commission, from 18 to 22 May 1992.³ The Commission decided at its twenty-sixth session to pursue those suggestions further.⁴ Subsequently, in order to assess the desirability and feasibility of work in this area, and to define appropriately the scope of the work, UNCITRAL and the International Association of Insolvency Practitioners (INSOL) held a Colloquium on Cross-Border Insolvency (Vienna, 17-19 April 1994), involving insolvency practitioners from various disciplines, judges, government officials and representatives of other interested sectors including lenders.⁵

3. The first UNCITRAL-INSOL Colloquium gave rise to the suggestion that work by the Commission should, at least at the current stage, have the limited but useful goal of facilitating judicial cooperation, and court access for foreign insolvency administrators and recognition of foreign insolvency proceedings (hereinafter referred to as "judicial cooperation" and "access and recognition"). Subsequently, an international meeting of judges was held specifically to elicit their views as to work by the Commission in this area (UNCITRAL-INSOL Judicial Colloquium

¹ Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17), paras. 382-393.

² The reports of the previous two sessions of the Working Group devoted to preparation of the draft provisions are found in documents A/CB.9/419 (Vienna, 30 October - 10 November 1995) and A/CN.9/422 (New York, 1 - 12 April 1996).

³ A/CN.9/SER.D/1, United Nations publication, Sales No. E.94.V.14.

⁴ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 17, (A/48/17), paras. 302-306. The background note on which the Commission based its discussion is contained in document A/CN.9/378/Add.4.

⁵ The report on the Colloquium is found in document A/CN.9/398.

on Cross-Border Insolvency, Toronto, 22 -23 March 1995.⁶ The view of the participating judges and government officials concerned with insolvency was that it would be worthwhile for the Commission to provide a legislative framework, for example by way of model legislative provisions, for judicial cooperation, and access and recognition.

5. The deliberations of the Working Group have focussed on provisions, tentatively in the form of model provisions, addressing issues including: definitions of certain terms; rules on recognition of foreign proceedings; relief afforded upon recognition; modalities of court access for foreign insolvency representatives; and judicial cooperation and coordination in the context of concurrent proceedings. This note sets forth draft provisions on various aspects of those issues, reflecting the deliberations that have taken place thus far, including those of the informal, open drafting group established by the Working Group to revise draft provisions during the course of the deliberations..

II. DRAFT UNCITRAL MODEL LEGISLATIVE PROVISIONS ON CROSS-BORDER INSOLVENCY

Preamble

WHEREAS the [Government] [Parliament] of the enacting State considers it desirable to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) Fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested parties [whether or not resident, domiciled or with a registered office in the enacting State];
- (b) Facilitating the gathering of information about the debtor's assets and affairs, and protecting and maximizing the value of the debtor's assets for the purposes of administering a cross-border insolvency;
- (c) Facilitating the rescue of financially troubled though viable businesses, thereby protecting investment and preserving employment;
- (d) Encouraging and providing a predictable environment for trade and investment in the enacting State; and
- (e) Furthering cooperation between the courts and other competent authorities of States affected by cases of cross-border insolvency.

⁶

The report on the Judicial Colloquium is found in document A/CN.9/413.

Be it therefore enacted as follows.

Notes

The text in square brackets in subparagraph (a) may be considered as a formulation affirming non-discriminatory treatment of creditors and interested parties.

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

This [Law] [Section] applies where:

- (a) A foreign proceeding has been commenced and recognition of that proceeding and assistance for the court or a foreign representative in that proceeding is sought in the enacting State; or
- (b) A proceeding is taking place in the enacting State under [insert names of applicable laws of the enacting State relating to insolvency] and assistance with respect to that proceeding is sought from a foreign court; or
- (c) A foreign proceeding and a proceeding in the enacting State in respect of the same debtor under [insert names of applicable laws of the enacting State relating to insolvency] are taking place concurrently."

Notes

The words "[Law][Section]" are used to emphasize that in many instances the model legislative provisions will be incorporated into existing national insolvency legislation, for example, as an additional chapter to equip the national statute for dealing with cross-border insolvencies. To suggest that likely possibility, the word "Section" is mentioned here. The point will also be explained in the Guide to Enactment, though the somewhat cumbersome expression "Law/Section" is not repeated elsewhere in this text.

* * *

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) "Foreign proceeding" means a collective judicial or administrative proceeding pursuant to a law relating to insolvency in a foreign State in which proceeding the asset and

affairs of the debtor are subject to control or supervision by a foreign court or other competent authority, for the purpose of reorganization or liquidation [provided that the debts were not incurred predominantly for household or other personal rather than commercial purposes];

(b) "Foreign representative" means a person or body authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

[(c) "Opening of foreign proceedings" is deemed to have taken place when the order opening the proceedings becomes effective, whether or not [final][subject to appeal;]

(d) "Court" in references to a foreign court is deemed to include a reference to the competent foreign authority other than a court, when such authority is competent to carry out functions referred to in this Law;

(e) "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

Notes

1. An issue to be considered further is the applicability of the model provisions in the context of consumer insolvencies, or other contexts in which consumer protection issues might be raised. It was suggested at an earlier stage that a definition in article 2 of "debtor" be included, which could set forth an exclusion of "consumer" debtors (A/CN.9/419, para. 33; A/CN.9/WG.V/WP.44, note 2 under article 2(b); A/CN.9/422, paras. 40-45). However, that approach to articulating a consumer exclusion is unavailable in light of the deletion of the definition of "debtor" (A/CN.9/422, para.45). The present text includes reference in the definition of "foreign proceeding" to an exclusion of proceedings involving predominantly debts of a private or consumer nature, rather than those incurred in the course of commercial activity.

2. Another approach might be to leave exclusions of consumer cases to be resolved under public policy exceptions to recognition. However, the Working Group may wish to explore other avenues further, in view of the caution needed to avoid suggesting wider use of public policy exemptions.

3. The Working Group has not agreed on the final disposition of the provision on the point of "opening" of foreign insolvency proceedings. Meanwhile, the provision here has been recast somewhat. It attempts to strike a balance between, on the one hand, the perhaps excessive openness of giving effect to any foreign proceedings that has been commenced (thus potentially encompassing proceedings that have not yet been given judicial or other official sanction), and, on the other hand, the excessive stringency of limiting recognition to proceedings at an advanced stage of finality.

4. In the deliberations to date the question has arisen as to how the model provisions might respond to cases involving specially regulated financial services institutions such as banks and insurance companies. As had been noted in previous discussions of the point, such institutions may be subject to special regulatory regimes including for liquidation or reorganization purposes, and therefore not subject to ordinary insolvency statutes. For similar reasons States might wish to take into account in their provisions on cross-border insolvency special circumstances possibly raised when the foreign debtor is such an institution. A blanket approach of excluding from the ambit of the model provisions foreign proceedings that involve as debtors such institutions may be unnecessarily broad and inflexible. Thus, the reinstatement of a definition of the term "debtor", excluding foreign, specially regulated financial institutions would not seem to be generally acceptable or necessarily desirable. An alternative approach may be to include in chapter III (rules of recognition) a possibility for the decision on recognition, or on specific relief, to take into account the character of a debtor as a financial services institution. This might take the form of a provision in article 11 along the following lines: "The court shall refuse an application for recognition of a foreign proceeding if the debtor is a financial institution regulated under the law of the enacting State."

5. Mention was made in earlier deliberations of the possibility that a State might distinguish treatment of foreign insolvency proceedings involving financial services institutions according to whether branches of the debtor in the State were subject to special regulatory regimes in the State (A/CN.9/419, paras. 34 and 35).

6. Subparagraph (d) has been added in response to the suggestion at the previous session to make it clear that references in the model provisions to foreign "courts" encompassed foreign competent authorities carrying out functions referred to in the text (A/CN.9/422, para. 49).

7. Subparagraph (e) sets forth a definition of "establishment" reflecting the formulation found in article 2(h) of the Convention on Insolvency Proceedings of the European Union.

* * *

Article 3. International obligations of the enacting State

To the extent that this Law conflicts with an obligation of the enacting State under or 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; but in all other respects the provisions of this Law apply.

* * *

Article 4. Competent [court][authority] for recognition of foreign proceedings

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by ... [Each State enacting these model provisions specifies the court, courts or authority competent to perform the functions in the enacting State].

Notes

In the guide to enactment, or perhaps even in the text itself, it could be pointed out that two basic possibilities exist: a specific court, or the courts where the assets of the debtor happen to be located, pursuant to the local rules on jurisdiction.

* * *

Article 5. Authorization to act as a foreign representative

A [... *insert title of person or body that may be appointed to administer a liquidation or reorganization under the law of the enacting State*] is authorized to seek foreign recognition of the proceeding in which the person or body has been appointed and to exercise such powers as to the foreign assets or affairs of the debtor as the applicable foreign law may permit.

Notes

The above provision reflects the revised formulation of the drafting group reflecting the discussions at the previous session, but not considered further at that session (A/CN.9/422, paras.70-74).

* * *

CHAPTER II. ACCESS OF FOREIGN REPRESENTATIVES
AND CREDITORS TO COURTS

Notes

At the preceding session, it was suggested that the order of the model provisions should reflect the order in which events would take place in cases of foreign representatives seeking recognition and assistance. Thus, the provisions on access of foreign representatives and creditors to the courts would, if a chronological order were followed, appear earlier in the text. Such a relocation of the provisions on access is presented for the consideration of the Working Group.

The relocation is reflected in the new title of chapter II, and in the renumbering of former articles 12 to 17 as 6 to 10. The former article numbers appear in square brackets in this chapter and through the consequentially renumbered remainder of the text.

* * *

Article 6 [12]. Access of foreign representatives to courts

A foreign representative may

- (a) at any time, directly apply for provisional relief in [any appropriate court of the enacting State];
- (b) directly apply for recognition of a foreign proceeding, request relief pursuant to article 12, and seek cooperation in accordance with article 15;
- (c) [upon recognition,] intervene in collective or any other proceedings in the enacting State affecting the debtor or its assets.

Notes

The above text was arrived at by the drafting group taking into account the deliberations of the Working Group (A/CN.9/422, paras. 144-151), but not discussed further at the previous session.

* * *

Article 7 [13]. Proof concerning foreign proceeding

- (1) A petition for recognition of a foreign insolvency proceeding[, or a petition for provisional measures [filed prior to an application for recognition,]] shall be submitted to the court accompanied by proof of the opening of the proceeding and of the appointment of the foreign representative. Such proof may be in the form of:
 - (a) a certified copy of the decision or decisions opening the foreign proceeding and appointing the foreign representative;
 - (b) a certificate from the foreign court evidencing the opening of the foreign proceeding and appointing the foreign representative; [or,
 - (c) in the absence of such form of proof, in any other manner required by the court].

No legalization or other similar formality is required.

(2) A translation of the documents referred to in paragraph (1) into an official language of the enacting State may be required.

Notes

1. It was suggested at the previous session that the scope of the provision should be broadened in order to encompass not only petitions for recognition of a foreign proceeding, as in its current formulation, but also in particular to applications for provisional measures. The bracketed language implements that suggestion. The question may be raised as to why, after a court in the enacting State has recognized a foreign representative, that representative would have to present in an application for provisional measures the same proof as had to be presented with the initial application for recognition, even if applying before a different court. That leaves the lingering question, raised in the text, of whether to authorize applications for provisional measures even prior to the application for or granting of recognition. This might be the case, for example, in urgent circumstances when the court competent to issue the measures is other than the court hearing the application for recognition (A/CN.9/422, para. 153).

2. Paragraph (1) has also been expanded to allow the presentation of a "certificate" from the foreign court evidencing the commencement of the foreign proceedings in line with a suggestion made at the previous session (A/CN.9/422, para. 154).

* * *

Article 8 [14]. Limited appearance

An appearance before a court in the enacting State by a foreign representative in connection with a petition or request pursuant to the provisions of this Law does not subject the foreign representative to the jurisdiction of the courts of the enacting State for any other purpose [related to assets and affairs of the debtor].

Notes

1. The words "related to assets and affairs of the debtor" have been added to make it clear that article 8, while providing a "limited appearance", does not attempt to preclude the courts in the enacting State from asserting jurisdiction on grounds other than those related to application for recognition (i.e., on grounds other than those related to the insolvency), a result that might conflict with national procedural laws (A/CN.9/422, para. 162).

2. The reference to relief being conditioned by the court on compliance by the foreign representative with court imposed conditions has been transferred to article 12(6), in line with a suggestion at the previous session (A/CN.9/422, para. 165).

* * *

Article 9 [16]. Commencement of insolvency proceedings by foreign representative

A foreign representative is entitled to request the opening of insolvency proceedings in the enacting State if the conditions for opening such a proceeding under the laws of the enacting State are met. Any such request shall be accompanied by the proof of [the opening of] the foreign proceeding and the appointment of the foreign representative referred to in article 7(1).

Notes

The second sentence has been added to apply the proof requirements in draft article 7 (applications for provisional measures) also to requests for the opening of local proceedings (A/CN.9/422, para. 177). Consideration might be given to locating that provision in article 7. The text also invites the Working Group to consider whether specific reference should be made to "the opening" of the foreign proceeding.

* * *

Article 10 [17]. Access of foreign creditors to insolvency proceedings in the enacting State

(1) Any creditor not resident, domiciled or with a registered office in the enacting State, has the right to commence, and file claims in, insolvency proceedings in the enacting State to the same extent and in the same manner as other creditors [of the same priority] who are resident, domiciled or have a registered office in the enacting State, in accordance with the procedural requirements of the enacting State. [Claims under public law such as foreign tax and social security claims, [shall][may] be treated as general (non-priority or non preference) claims.]

(2) As soon as insolvency proceedings are opened in the enacting State and to the extent that notification of commencement of insolvency proceedings is required for creditors in the enacting State, the [court][administrator] shall cause notification of the opening of the proceedings to be made also to creditors not resident, domiciled or with a registered office in the enacting State. The notification shall provide [a reasonable minimum time] within which such a creditor can file a claim.

- (3) The contents of the notification shall include:
- (a) an indication of the time limits and the place for filing of claims, and the sanctions that result from failure to comply with those requirements;
 - (b) an indication whether secured creditors need to file their secured claims; and
 - (c) any other information required to be included in notifications to creditor pursuant to the laws of the enacting State and the orders of the court.

Notes

1. In the deliberations thus far the Working Group has exhibited a general hesitation to address recognition of claims of foreign tax and social security authorities by way of a general rule in the model provisions (A/CN.9/422, paras. 180 to 184). An intermediary solution might be to retain the text referring to public claims in square brackets. That bracketed text could be offered as an option for States that would use enactment of the model provisions as an occasion to affirm non-discriminatory treatment of foreign public claims.
2. The expression "foreign tax authorities and social security authorities" has been replaced by a formulation intended to take into account claims of public authorities that technically may be neither tax nor social security authorities.
3. Paragraph (2) reflects the suggestion at the previous session that notification requirements with respect to foreign creditors should be triggered only in instances when domestic creditors would have to be given notice (A//CN.9/422, para. 189).

* * *

CHAPTER III. RECOGNITION OF FOREIGN INSOLVENCY PROCEEDINGS

Article 11 [6]. Recognition of foreign insolvency proceedings

- (1) For the purposes of this Law, a foreign proceeding shall be recognized:
- (a) as a foreign main proceeding if the court of the foreign proceeding has jurisdiction based on the centre of the debtor's main interests;

or

(b) as a foreign non-main proceeding if the debtor has an establishment [within the meaning of article 2((e)] in the foreign jurisdiction.

(2) The court shall grant or refuse an application for recognition of a foreign main proceeding within ____ days after the application has been filed with the court.

(3) Absent proof to the contrary, the registered seat of the debtor is deemed to be the centre of its main interests.

Notes

1. The above text of article 11 (formerly article 6) reflects the deliberations of the Working Group at the previous session (A/CN.9/422, paras. 76 to 93). Those deliberations have resulted in particular in a distinction between foreign "main" and foreign "non-main" proceedings.

2. Paragraph (2), which has not as such yet been discussed in the Working Group, is offered by the drafting group as an outgrowth of the discussion thus far. The question may be raised what would be the result if the decision on recognition was not issued within the specified period.

3. Paragraph (3) has been added to increase the specificity and predictability of the rule based on the "centre of the debtor's main interests" (A/CN.9/422, para. 91).

* * *

Article 12 [7]. Relief available to foreign representative

(1) (a) From the time of the filing of an application for recognition until recognition has been granted or refused, and where necessary to protect the assets of the debtor or the interests of creditors, the court may, upon the request of the foreign representative, grant any of the [types of] relief permitted under paragraph (2); [such relief shall be available upon application in the case of a foreign main proceeding in one of the States listed in Annex X];

(b) The court shall order the foreign representative to give such notice as would be required for requests for provisional relief in the enacting State;

(c) Such relief may not extend beyond the date that recognition is granted or denied, unless extended under paragraph (2)(b)(ii).

(2) (a) Upon recognition of a foreign main proceeding[, or upon application for recognition in regard to proceedings taking place in one of the States listed in Annex X,] the commencement or continuation of individual actions by creditors against [the debtor or] [the debtor's assets] and the transfer of any assets of the debtor are stayed. The stay is subject to any exceptions or limitations which would apply under

OPTION I: any law of the enacting State which would apply to proceedings determined by the court to be comparable to the foreign main proceeding;

OPTION II: the law of the foreign main proceeding [if the foreign main proceeding is taking place in one of the States listed in Annex X];

(b) Upon recognition of any foreign proceeding, the court may, upon the request of the foreign representative, grant any appropriate relief including:

(i) staying actions that are not stayed or extending the stay of action under paragraph 2 (a);

(ii) extending relief granted under paragraph (1) to protect the assets of the debtor or interests of creditors;

(iii) compelling testimony or the delivery of information concerning the assets and liabilities of the debtor;

(iv) permitting the foreign representative to preserve and manage the assets of the debtor;

(v) granting other relief which may be available under the laws of the State of the foreign proceeding or under the laws of the enacting State, including actions to reverse or render unenforceable legal acts detrimental to all creditors;

(c) The foreign representative shall give notice of recognition, of the stay under paragraph (2)(a), and of any relief granted under paragraph (2)(b), within ___ days to all known creditors that have an address in the enacting State;

(d) Any relief under this paragraph shall terminate,

(i) unless extended prior to such termination, within ___ days after recognition;
or

(ii) if insolvency proceedings under the law of the enacting State have been commenced and to the extent that the court in such proceedings orders the termination of such relief.

(3) Upon request of the foreign representative in a foreign main proceeding, the court may, no earlier than ___ days after recognition, grant turnover of assets to the foreign representative for administration, realization or distribution in the foreign proceeding.

- (4) In granting or denying relief under this article, the court must be satisfied that creditors collectively are protected against prejudice and will be given a fair opportunity to assert their claims against the debtor.
- (5) The court may at any time, upon request of a person or entity affected by relief granted or requested under this article, deny, modify or terminate such relief.
- (6) A court granting relief to the foreign representative may condition such relief on compliance by the foreign representative with the orders of the court.

Notes

1. The Working Group has before it the revised version of article 12 (formerly article 7) prepared by the drafting group at the previous session, reflecting the deliberations at that stage (A/CN.9/422, para. 118). To it has been added in paragraph (1) an option for enacting States that would wish to accord relief upon application for recognition, rather than waiting for the later stage of actual recognition, for proceedings emanating from States on a list of designated countries. A companion option is set forth in Option II in paragraph (2)(a), for those States that would wish to accord States on the list application of their law to determine exceptions and limitations to the stay. Also a new arrival here is the provision (paragraph (6), formerly in article 8 [14]) linking relief for the foreign representative to compliance with any conditions that might be attached to that relief by the court (see note 2 under article 8).
2. It may be pointed out in the guide to enactment that an enacting State might adopt a combination of Options I and II, if the State were to retain the bracketed text in Option II.
3. In view of the content of article 12, former articles 8 (modification and termination of relief) and 9 (notification of creditors) have been rendered superfluous and no longer appear.
4. Paragraph (1) suggests that application for recognition is a prerequisite for the granting of provisional measures to the foreign representative. As discussed in note 1 under article 7(1), the Working Group may wish to consider whether a more flexible approach might be warranted, which would allow courts to take account of cases in which urgent circumstances might justify the granting of provisional measures prior to the actual filing by the foreign representative of the application for recognition. It is conceivable that, in order to protect assets urgently from sequestration or dissipation, a court other than the court competent to hear a petition for recognition would be requested to issue provisional measures, prior to the filing of the application for recognition with the competent court.
5. The words "the debtor's assets" in paragraph (2)(a) reflect the suggestion at the previous session that the stay of individual creditor action should be limited in scope so as not to prevent creditors from proving claims against the debtor (A/CN.9/422, para. 97). Such an approach would be intended to leave in place a stay of individual creditor execution against assets.

6. Paragraph (2)(a) sets forth two options for enacting States as regards the law to be applied to determine the exceptions or limitations applicable to the stay upon recognition. Option II contains in turn an option for States that would wish to accord application of the foreign law on the basis whether or not the foreign proceeding emanates from a State on a prescribed list.
7. The same type of observation made in the note 2 under article 11(2) may be made with respect to paragraph (2)(c).
8. Paragraph (2)(c) has been reformulated so as to provide more specific notice.
9. Paragraph (2)(d)(i) has been modified to avoid retroactive reinstatement issues that could arise under the formulation in the version in A/CN.9/422.
10. Paragraph (3) has been reformulated to reflect that the point of time at which application for relief is made is generally not as critical a factor as when the relief is granted or becomes effective.

* * *

Article 13 (7 bis). Public policy exceptions

Notwithstanding article 11, a court shall refuse to recognize a foreign proceeding or to grant relief under this Law where the effects of such recognition or relief would be manifestly contrary to public policy.

* * *

Article 14 [10]. Discharge of obligations to debtor

(1) Where an obligation has been honoured in the enacting State for the benefit of a debtor who is subject to foreign proceedings recognized in accordance with article 11, when it should have been honoured for the benefit of the foreign representative pursuant to relief provided to the foreign representative upon recognition, the person honouring the obligation shall be deemed to have discharged the obligation if the person was unaware of the foreign proceeding.

(2) Where an obligation referred to in paragraph (1) is honoured before notification in accordance with article 12(1)(b) and (2)(c) is made, the person honouring the obligation is presumed, in the absence of proof to the contrary, to have been unaware of the foreign proceeding; where the obligation is honoured after such notification, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the foreign proceeding.

Notes

At the previous session, the Working Group exchanged views on the present article deferring a final decision as to its disposition until other parts of the text had been examined further (A/CN.9/422, paras. 124 to 128).

* * *

CHAPTER IV. COOPERATION WITH FOREIGN JURISDICTIONS

Article 15 [11]. Authorization of cooperation

- (1) The courts of the enacting State, and administrators appointed in the enacting State, shall cooperate to the maximum extent possible with foreign courts or competent authorities and with foreign representatives.
- (2) The courts of the enacting State may request information or assistance directly from foreign courts or competent authorities in any matter relating to insolvency proceedings in the enacting State.
- (3) (a) Cooperation may be implemented by any appropriate means, including:
 - (I) appointment of a person to act at the direction of the court;
 - (ii) communication, by any means deemed appropriate by the court, of information, and coordination of the administration and supervision of the debtor's assets and affairs;
 - (iii) approval or implementation by courts of arrangements concerning the coordination of proceedings;
 - (iv) [... the enacting State may wish to list additional forms or examples of cooperation].
- (b) Cooperation with foreign courts or competent authorities and foreign representatives shall in all cases be subject to the procedural requirements of the court.

Notes

The Working Group has before it the revised version of article 15 (formerly article 11), which emerged at the stage of the deliberations achieved at the previous session. (A/CN.9/422, para. 143). The text presented to the Working Group by the drafting group, but not considered in full by the Working Group at that session, is reproduced here for further consideration.

* * *

CHAPTER V. CONCURRENT PROCEEDINGS

Article 16 [18]. Concurrent proceedings

(1) Where an insolvency proceeding has been opened in a foreign jurisdiction in which the debtor has the centre of its main interests, the courts of the enacting State shall have jurisdiction to open insolvency proceedings against the debtor only if the debtor has [an establishment] [or assets] in the enacting State[, and the effects of those proceedings shall be restricted to the [establishment] [or] [assets] of the debtor situated in the territory of the enacting State].

(2) Recognition of a foreign insolvency proceeding is, for the purposes of initiating proceedings in the enacting State referred to in paragraph (1) and in the absence of evidence to the contrary, proof that the debtor is insolvent.

Notes

Former paragraph (3) (on cooperation between locally appointed administrators in the enacting State and foreign representatives) is now incorporated in article 15 (A/CN.9/422, para. 197).

* * *

Article 17 [19]. Rate of payment of creditors

Without prejudice to [secured claims] [rights in rem], a creditor who has received part payment in respect of its claim in an insolvency proceeding opened in another State may not receive a payment for the same claim in an insolvency proceeding opened with regard to the same debtor in the enacting State, so long as the payment to the other creditors of the same class for their claims in the proceeding opened in the enacting State is proportionately less than the payment the creditor has already received.

Notes

The provision has been slightly reformulated to make its intent clearer, namely, to avoid the situation in which creditors would be paid twice or out of proportion to the rate of payment given to other creditors of the same class.