



Cross-Border Insolvency Act 2008

No. 24, 2008

**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**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to give effect to the Model Law on
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[Assented to 26 May 2008]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

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.	26 May 2008
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.	1 July 2008 (see F2008L02165)
3. Schedule 1	At the same time as the provision(s) covered by table item 2.	1 July 2008

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.

3 Crown to be bound

This Act binds the Crown in each of its capacities.

4 Application of Act

This Act does not extend to the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.

Part 2—Model Law on Cross-Border Insolvency

5 Definitions

- (1) In this Act:

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

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.

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

- (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.

6 Model Law to have force of law in Australia

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

7 References in Model Law to this State

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

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

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

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.

8 Identifying Australian laws relating to insolvency

The Model Law has the force of law in Australia as if the Model Law referred to:

- (a) the *Bankruptcy Act 1966*; and
- (b) Chapter 5 (other than Parts 5.2 and 5.4A), and section 601CL, of the *Corporations Act 2001*;

wherever the Model Law provides that the laws of the enacting State relating to insolvency are to be identified.

9 Entities that are not covered by the Model Law

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

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

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

10 Courts competent to perform functions under Model Law

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

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

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

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

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

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

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

12 Access of foreign creditors to Australian insolvency proceedings

- (1) For the purposes of Article 13 of the Model Law (as it has the force of law in Australia), the alternative wording set out in footnote 2 to the Model Law replaces paragraph 2 of that Article.
- (2) For the purposes of the replacement paragraph, the claims of foreign creditors, other than those concerning tax and social security obligations, must not be ranked lower than the unsecured claims of other creditors solely because the creditor concerned is a foreign creditor.

13 Application for recognition of foreign proceeding

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

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

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

14 Subsequent information

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

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

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

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

16 Effects of recognition of a foreign main proceeding

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

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

Section 17

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

17 Actions to avoid acts detrimental to creditors

- (1) The actions referred to for the purposes of paragraph 1 of Article 23 of the Model Law (as it has the force of law in Australia) are actions arising under or because of:
 - (a) section 120, 121, 121A, 122, 128B or 128C or Division 4A of Part VI of the *Bankruptcy Act 1966*; or
 - (b) Division 2 of Part 5.7B of the *Corporations Act 2001*.
- (2) A provision referred to in paragraph (1)(a) or (b) applies, with appropriate changes, in relation to an action for the purposes of a foreign proceeding in the same way it would apply if the action were for the purposes of a proceeding in relation to:
 - (a) a bankrupt (within the meaning of subsection 5(1) of the *Bankruptcy Act 1966*); or
 - (b) a company (within the meaning of section 9 of the *Corporations Act 2001*);as the case requires.

18 Forms of cooperation

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

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

Laws/law of this State

- (1) A reference in Article 7 of the Model Law (as it has the force of law in Australia) to laws of this State is a reference to the following laws:
 - (a) a law of the Commonwealth;
 - (b) a law of a State;
 - (c) a law of a Territory (other than an external Territory).

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

Courts of this State

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

20 Application

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

Part 3—Interaction with other Acts

21 Interaction with the *Bankruptcy Act 1966*

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.

22 Interaction with the *Corporations Act 2001*

- (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:
 - (a) Division 9 of Part 5.6 of the *Corporations Act 2001*; or
 - (b) Part 5.7 of the *Corporations Act 2001*;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.
- (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*.

Part 4—Regulations

23 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law

Note: See section 5.

PREAMBLE

The purpose of the present Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
- (b) Greater legal certainty for trade and investment;
- (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) Protection and maximization of the value of the debtor's assets;
- (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

CHAPTER I. GENERAL PROVISIONS

Article 1

Scope of application

1. The present Law applies where:
 - (a) Assistance is sought in this State by a foreign court or a foreign representative in connection with a foreign proceeding; or
 - (b) Assistance is sought in a foreign State in connection with a proceeding under [*identify laws of the enacting State relating to insolvency*]; or

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

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

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

Article 2

Definitions

For the purposes of the present Law:

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

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

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

(d) “Foreign representative” means a person or body, including one appointed on an interim basis, 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;

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

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

Article 3

International obligations of this State

To the extent that the present 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.

Article 4

[*Competent court or authority*]¹

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

Article 5

Authorization of [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to act in a foreign 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 a foreign State on behalf of a proceeding under [*identify laws of the enacting 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*].”

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

The sole fact that an application pursuant to the present Law is made to a court in this State by a foreign representative does not subject the foreign representative of the foreign assets and affairs of the debtor to the jurisdiction of the courts of this State for any purpose other than the application.

Article 11

Application by a foreign representative to commence a proceeding under [identify laws of the enacting State relating to insolvency]

A foreign representative is entitled to apply to commence a proceeding under *[identify laws of the enacting State relating to insolvency]* if the conditions for commencing such a proceeding are otherwise met.

Article 12

Participation of a foreign representative in a proceeding under [identify laws of the enacting State relating to insolvency]

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under *[identify laws of the enacting State relating to insolvency]*.

Article 13

Access of foreign creditors to a proceeding under [identify laws of the enacting State relating to insolvency]

1. Subject to paragraph 2 of the present article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under *[identify laws of the enacting State relating to insolvency]* as creditors in this State.
2. Paragraph 1 of the present article does not affect the ranking of claims in a proceeding under *[identify laws of the enacting State relating to insolvency]*, except that the claims of foreign creditors shall not be ranked lower than *[identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an*

*equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims].*²

Article 14

Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]

1. Whenever under [*identify laws of the enacting State relating to insolvency*] notification is to be given to creditors in this State, such notification shall also be given to the known creditors that do not have addresses in this State. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No rogatory letters or other similar formality is required.

3. When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

(a) Indicate a reasonable time period for filing claims and specify the place for their filing;

(b) Indicate whether secured creditors need to file their secured claims;

² The enacting State may wish to consider the following alternative wording to replace paragraph 2 of article 13:

“2. Paragraph 1 of the present article does not affect the ranking of claims in a proceeding under [*identify laws of the enacting State relating to insolvency*] or the exclusion of foreign tax and social security claims from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations shall not be ranked lower than [*identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims*].”

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

CHAPTER III. RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15

Application for recognition of a foreign proceeding

1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
2. An application for recognition shall be accompanied by:
 - (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.
4. The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

Article 16

Presumptions concerning recognition

1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the court is entitled to so presume.
2. The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.
3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 17

Decision to recognize a foreign proceeding

1. Subject to article 6, a foreign proceeding shall be recognized if:
 - (a) The foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2;
 - (b) The foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;
 - (c) The application meets the requirements of paragraph 2 of article 15;
 - (d) The application has been submitted to the court referred to in article 4.
 2. The foreign proceeding shall be recognized:
 - (a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
 - (b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.
-

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

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

Article 18

Subsequent information

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

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

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

Article 19

Relief that may be granted upon application for recognition of a foreign proceeding

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

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

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

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

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

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

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

Article 20

Effects of recognition of a foreign main proceeding

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

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

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

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

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

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

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

Article 21

Relief that may be granted upon recognition of a foreign proceeding

1. Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:

(a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20;

(b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 (b) of article 20;

(c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20;

(d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court;

(f) Extending relief granted under paragraph 1 of article 19;

(g) Granting any additional relief that may be available to *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]* under the laws of this State.

2. Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected.

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

Article 22

Protection of creditors and other interested persons

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

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

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

Article 23

Actions to avoid acts detrimental to creditors

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

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

Article 24

Intervention by a foreign representative in proceedings in this State

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

proceedings in which the debtor is a party.

CHAPTER IV. COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25

Cooperation and direct communication between a court of this State and foreign courts or foreign representatives

1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]*.
2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26

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

1. In matters referred to in article 1, a *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]* shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.
2. The *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]* is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

Article 27

Forms of cooperation

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

- (a) Appointment of a person or body to act at the direction of the court;
- (b) Communication of information by any means considered appropriate by the court;
- (c) Coordination of the administration and supervision of the debtor's assets and affairs;
- (d) Approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) Coordination of concurrent proceedings regarding the same debtor;
- (f) [*The enacting State may wish to list additional forms or examples of cooperation*].

CHAPTER V. CONCURRENT PROCEEDINGS

Article 28

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

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

Article 29

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

Where a foreign proceeding and a proceeding under [*identify laws of the enacting State relating to insolvency*] are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

(a) When the proceeding in this State is taking place at the time the application for recognition of the foreign proceeding is filed,

- (i) Any relief granted under article 19 or 21 must be consistent with the proceeding in this State;
- (ii) If the foreign proceeding is recognized in this State as a foreign main proceeding, article 20 does not apply;

(b) When the proceeding in this State commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,

- (i) Any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in this State;
- (ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 2 of article 20 if inconsistent with the proceeding in this State;

(c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30

Coordination of more than one foreign proceeding

In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

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

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

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

Article 31

Presumption of insolvency based on recognition of a foreign main proceeding

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

Article 32

Rule of payment in concurrent proceedings

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

[*Minister's second reading speech made in—
Senate on 13 February 2008
House of Representatives on 20 March 2008*]

(17/08)
