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Draft toolkit for expedited civil asset tracing and recovery in
insolvency proceedings (ATR)

Note by the Secretariat

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Introduction

1. The provisional agenda of the sixty-fourth session of the Working Group ([A/CN.9/WG.V/WP.191](#)) provides background information about the project on civil asset tracing and recovery in insolvency proceedings referred to the Working Group by the Commission at its fifty-fourth session.¹ The annex to this note contains a toolkit setting out tools that could expedite civil asset tracing and recovery in insolvency proceedings (ATR), both domestically and across borders. It has been revised to reflect comments made at the Working Group's sixty-third session to the first version of the toolkit that was annexed to the draft descriptive, informational and educational text on ATR in document [A/CN.9/WG.V/WP.189](#) ([A/CN.9/1163](#), chapter IV). The agreement was reached at that session that the scope and focus of the toolkit should be expanded to cover domestic and cross-border ATR ([A/CN.9/1163](#), para. 14 (a)) and that such an expanded toolkit should be submitted for consideration by the Working Group at its sixty-fourth session in a separate document ([A/CN.9/1163](#), para. 39).

2. The toolkit is intended to complement a descriptive, informational and educational text on ATR whose latest draft is found in document [A/CN.9/WG.V/WP.192](#) that is before the Working Group for consideration at its sixty-fourth session. In revising the toolkit, efforts were made to ensure its added value and avoid unnecessary duplication and repetitions with that other text. The footnotes in bold indicate the source of information and are not intended to stay in the final text.

¹ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), paras. 215–217.

Annex

Draft toolkit for expedited civil asset tracing and recovery in insolvency proceedings (ATR)

A. Introduction

1. This toolkit complements a descriptive, informational and educational text on civil asset tracing and recovery in insolvency proceedings (the ATR text). It was prepared following the same approach (i.e. as a non-prescriptive text) and with the same purpose (i.e. to guide policymakers and legislators seeking to enhance their ATR framework). The toolkit uses the same terminology and abbreviations as the ATR text.

2. The main policy objective of the toolkit is to preserve and enhance the insolvency estate for the benefit of the creditors and other parties in interest, including the debtor. The toolkit helps to achieve that objective by suggesting tools that enable and facilitate the urgent deployment of ATR measures, such as disclosure, asset protection and asset recovery measures. Although differing in name, those measures share many common features across States. The toolkit identifies these commonalities, which in the cross-border context should help courts in different States to understand better ATR measures imposed by foreign courts.

3. The use of the suggested tools may reduce risks that assets that belong to the insolvency estate will be transferred across multiple jurisdictions, necessitating ATR in those jurisdictions. It may also reduce the need for duplicative hearings on ATR relief in jurisdictions through which assets have been transferred. The use of the suggested tools may also reduce ATR-associated costs, which is an important consideration in insolvency proceedings regardless of the size of the debtor but particularly in simplified insolvency proceedings where the insolvency estate of MSEs typically does not have resources to finance ATR.

4. At the same time, the toolkit refers to safeguards that aim to ensure that the speed, efficiency and effectiveness of ATR are not achieved at the expense of other considerations, such as due process and protection of legitimate interests of persons affected by ATR. The common safeguards that courts take into account when imposing ATR measures include whether the relief sought in each particular case: (a) is fair, effective, urgent, timely and necessary; (b) assists in preserving and maximizing the value of the insolvency estate; and (c) ensures adequate protection of creditors and other parties in interest, including the debtor. Some safeguards are generally and equally applicable to all ATR measures while some others depend on the ATR measure imposed, in particular its impact on the affected person(s) and broader public policy considerations of a particular State. In cross-border insolvencies, courts also consider whether ATR relief enhances comity and cross-border cooperation and, where there are concurrent proceedings, whether ATR relief would facilitate coordination of those proceedings or interfere with them. The UNCITRAL cross-border framework provides important guidance in that respect, stressing the central role of a foreign main proceeding and a coordination role of the planning proceeding in enterprise group insolvencies.¹

5. Better knowledge and understanding of foreign ATR measures and accompanying safeguards might make the court in the receiving State more likely to promptly give domestic effect to foreign ATR measures, or grant similar or equivalent domestic ATR relief, and to stay or decline to commence a local proceeding in appropriate cases. They might also make the court more likely to proceed on an *ex parte* basis and possibly also with restrictions on disclosure, if allowed under applicable legal framework and justified by the circumstances of the case.

¹ See, e.g. article 19 (4) of MLCBI under which the court may refuse to grant relief if such relief would interfere with the administration of a foreign main proceeding. See also MLEGI as regards the role of the planning proceeding in enterprise group insolvencies.

6. The toolkit is not meant to be exhaustive. Regard must be had to other ATR measures not included in this toolkit, for example measures under criminal law or mandated by asset-specific legal frameworks, including under international instruments. Policy and legislative choices made by States in devising ATR measures and frameworks, which reflect, in particular, differences between reorganization and liquidation and the different treatment of foreign representatives and local insolvency representatives and of foreign proceedings and local insolvency proceedings, should also be considered when using the toolkit.

B. Key features of an ATR enabling framework

7. For ATR to achieve its intended purpose, the domestic legal framework should provide for a broad range of ATR measures and allow combining and tailoring them to the needs at hand, including: (a) disclosure measures aimed at obtaining information about the debtor and its assets and affairs; (b) asset protection measures aimed at temporarily restricting disposition of the debtor's assets; and (c) recovery measures aimed at returning to the insolvency estate the assets that belong to the insolvency estate.²

8. The court should be able to order ATR measures at its own motion or upon request of interested persons.³ Proper notification of the affected parties should be required in connection with the imposition of an ATR measure unless the court limits or dispenses with the need to provide notice⁴ (see section C below for *ex parte* measures). In case of a challenge, prompt judicial review, including appeal, of an ATR measure sought or ordered should be made available to affected persons.⁵ If the challenge is successful, remedies may include lifting or modifying the ATR measure and ordering compensation for damages.⁶ The court may impose sanctions in connection with an application for the ATR measure.⁷

9. The court should be able to modify or terminate ATR measures in other cases, at its own motion or upon request of interested or affected persons.⁸ In granting, denying, modifying or terminating the ATR measure, the court or relevant administrative authority should be satisfied that the interests of the creditors and other interested persons, including the debtor and an enterprise group member subject to the ATR measure to be granted, are adequately protected.⁹

10. While ATR in a given case may require specific measures and safeguards, fundamental principles on which this toolkit is based are: (a) requests for ATR measures should be considered by the court at the earliest possible time;¹⁰ (b) ATR measures should be granted, as a general rule, on an urgent, but in any event timely, basis; (c) when and as applicable, necessary and appropriate, ATR measures must be accompanied by ancillary supportive measures, such as restrictions on disclosure; and (d) effective enforcement of ATR measures and sanctions for the improper use of ATR measures or non-compliance with ATR measures must be ensured. Those principles are equally applicable for ATR domestically and across borders regardless of how

² E.g. recommendations 39, 46 and 48; MLCBI, articles 7, 19–21, 23; articles 6, 12–16 and X of MLII; and articles 8, 20, 22, 24 and 32 of MLEGI.

³ E.g. the provisional insolvency representative, the insolvency representative, the foreign representative, the group representative, creditors and other parties in interest and affected persons (including the debtor), including a person entitled under the law of the originating State to seek recognition and enforcement of an insolvency-related judgment. See, e.g. recommendations 39, 44 and 51; articles 19, 20, 21 and 22 (3) of MLCBI; article 12 of MLII; articles 20 (1), 22 (1) and (3), 24 (1) and (2), and 27 (3) of MLEGI.

⁴ See recommendation 42; article 19 (2) of MLCBI; article 12 (2) of MLII; and article 22 (2) of MLEGI.

⁵ See, e.g. recommendation 43.

⁶ See, e.g. recommendations 40 (a) and 43–45.

⁷ See, e.g. recommendation 40 (b).

⁸ E.g. recommendation 44; and article 22 (3) of MLCBI.

⁹ See, e.g. article 22 (1) of MLCBI.

¹⁰ See article 17 (3) of MLCBI.

ATR measures are granted (e.g. *ex parte* or otherwise) and when they are granted (during proceedings or before their upcoming commencement).

(a) Enterprise group specifics

11. In group proceedings, the group representative should be enabled to request and obtain ATR measures to the extent needed to preserve the possibility of developing or implementing a group insolvency solution or to protect, preserve, realize or enhance the value of assets of an enterprise group member subject to or participating in a planning proceeding or the interests of creditors of such an enterprise group member. The group representative should also be enabled to seek recognition of ATR measures made in a planning proceeding.¹¹ This applies to both domestic and cross-border contexts.¹²

12. An ATR measure may not be granted to a group representative with respect to the assets and operations of any enterprise group member not subject to an insolvency proceeding unless an insolvency proceeding was not commenced for the purpose of minimizing the commencement of insolvency proceedings.¹³

(b) ATR in aid of a foreign proceeding

13. A foreign representative should be enabled to request and obtain ATR measures in respect of the debtor and assets and affairs of the debtor administered in a foreign proceeding or seek recognition of ATR measures made in that proceeding.¹⁴ The insolvency representative or other person entitled under the law of the originating State to seek recognition and enforcement of an insolvency-related judgment should be enabled to request and obtain ATR measures in respect of any assets of any party or parties against whom the insolvency-related judgment has been issued (or other appropriate relief within the scope of the judgment) and should also be enabled to seek recognition and enforcement of ATR measures made in the originating State with respect to that judgment.¹⁵ The persons mentioned in this paragraph should be authorized to act in another State only as permitted by the applicable law of that State,¹⁶ and the receiving State may restrict the rights of those persons exercised on its territory.¹⁷

14. To expedite cross-border ATR, receiving courts may stay or decline to commence a domestic insolvency or other proceeding if its commencement is not necessary for giving effect to an ATR measure imposed in the foreign proceeding or in the planning proceeding or for granting an equivalent or similar domestic ATR relief.¹⁸ However, the receiving court may also refuse the ATR measure if granting it would be manifestly contrary to the public policy of its State and for other grounds.¹⁹ In addition, it retains authority to order appropriate domestic ATR measures instead of or in addition to ATR measures imposed by the requesting court and may subject the relief granted to conditions it considers appropriate.²⁰ The ATR measure granted to non-main proceedings should relate only to assets that under the law of the recognizing State should be administered in the foreign non-main proceeding or

¹¹ E.g. articles 20, 22 and 24 of MLEGI.

¹² Ibid.

¹³ E.g. article 20 (2), 22 (4) and 24 (3) of MLEGI.

¹⁴ E.g. article 5 and other relevant articles of MLCBI.

¹⁵ E.g. article 12 (1) of MLII.

¹⁶ E.g. article 5 in MLCBI and MLII. For example, access of a foreign representative to registers and government files may be hindered by the law of the receiving State (e.g. local laws on data protection or privacy protection). See [A/CN.9/1163, para. 30 \(c\)](#).

¹⁷ E.g. if there are concerns over feasibility of holding the foreign representative liable for its actions in the receiving State. See [A/CN.9/1163, para. 30 \(c\)](#).

¹⁸ See articles 28–32 of MLEGI.

¹⁹ See e.g. article 6 in MLCBI and MLEGI and article 7 in MLII for the public policy exception. For other grounds, see, e.g. article 14 of MLII.

²⁰ E.g. articles 7 and 22 (2) of MLCBI.

concern information required in that proceeding and it should be consistent with the foreign main proceeding.²¹

²¹ E.g. articles 21 (3), 23 (2) and 30 (a) and (b) of MLCBI.

C. Specifics of ATR measures depending on when and how they are granted and their nature

Objectives	Features	Safeguards
Specifics of granting ATR measures on an <i>ex parte</i> basis		
<ol style="list-style-type: none"> 1. To prevent (further) dissipation of the insolvency estate assets 2. To ensure effectiveness of ATR measures 	<ol style="list-style-type: none"> 1. It should be possible to handle requests for, and grant, ATR measures on an urgent <i>ex parte</i> basis;²² 2. ATR measures should be granted, as a rule, on an <i>ex parte</i> basis where sufficient evidence of fraud, concealment of information and assets, poor record-keeping, non-cooperation by the debtor or directors and other violation of insolvency and other laws exists and in other appropriate cases (e.g. to mitigate risks of further dissipation of assets). 	<ol style="list-style-type: none"> 1. The applicant may be required to demonstrate high urgency, strong reasons for the <i>ex parte</i> ATR measure (e.g. the need for an element of surprise and to preserve the value or avoid dissipation of the insolvency estate assets) and that the benefits of imposing the <i>ex parte</i> ATR measure outweigh any potentially resulting harm; 2. The applicant may be required to provide full and frank disclosure as regards the <i>ex parte</i> ATR measure sought (that is, the applicant must set forth the arguments the respondent would likely make, would it be heard); 3. The <i>ex parte</i> ATR measure should, as a rule, be imposed only for a (very) short period and may be conditioned upon presentation of a claim and commencement of <i>inter partes</i> proceedings within a fixed period after imposition of the <i>ex parte</i> ATR measure; 4. The <i>ex parte</i> ATR measure may be conditioned upon additional requirements, for example the requirement on the applicant to provide indemnification that will cover damages if the <i>ex parte</i> ATR measure is wrongfully ordered or executed; and 5. Affected parties should have the right, upon urgent application, to be heard promptly on whether the relief should be continued.²³

²² Recommendations 42 and 43; article 12 (2) of MLIJ and accompanying commentary in the guide to enactment.

²³ Recommendation 43.

Objectives	Features	Safeguards
Specifics of granting ATR measures with restrictions on their disclosure		
Not to defeat the purpose and effectiveness of an ATR measure	<ol style="list-style-type: none"> 1. It should be possible to handle requests for, and grant, ATR measures in, <i>in-camera</i> proceedings and to impose other adequate restrictions on disclosure to effectively prevent premature disclosure of ATR measures and relevant proceedings by the court staff and other persons; 2. A restriction on disclosure may be granted upon request of the applicant or at the court's own motion. 	<ol style="list-style-type: none"> 1. A restriction on disclosure should be imposed only when strictly necessary; 2. It should be limited in time; 3. It should be discharged as soon as it has served its purpose.
Specifics of granting ATR measures of a provisional nature		
<ol style="list-style-type: none"> 1. To maintain or otherwise regulate the status quo 2. To prevent (further) dissipation of the assets that belong to the insolvency estate 3. To ensure effectiveness of ATR measures imposed upon commencement of insolvency proceedings or recognition 	<ol style="list-style-type: none"> 1. It should be possible to request and grant ATR measures of a provisional nature (i.e. a provisional relief), e.g. before the commencement of an insolvency proceeding or recognition of a foreign proceeding, a foreign planning proceeding or an insolvency-related judgment;²⁴ 2. A request for a provisional relief may be submitted, as the case may be, by the debtor, creditors or third parties,²⁵ the provisional insolvency representative, the insolvency representative, a person entitled to seek recognition and enforcement of an insolvency-related judgment other than the insolvency representative,²⁶ a foreign representative²⁷ or the group representative;²⁸ 3. Requests for a provisional relief should be handled with urgency; 4. The court should be able to impose provisional relief at its own motion; 5. A broad range of provisional relief (including any combination thereof) should be made available, including: <ol style="list-style-type: none"> (a) Appointing the provisional insolvency representative and entrusting it with tasks related to the debtor and its assets, 	<ol style="list-style-type: none"> 1. The provisional relief should be urgently needed to protect the assets of the debtor or the interests of the creditors.²⁹ The court may require the applicant to demonstrate the urgency and the need for the provisional relief; 2. The provisional relief should be of limited duration and subject to periodic review;³⁰ 3. The law may require the court to be satisfied that there is some likelihood that the debtor will satisfy the standards for commencement of insolvency proceedings; 4. The applicant may be required to provide indemnification and, where appropriate, to pay costs or fees.³¹

²⁴ Recommendation 39; article 19 of MLCBI; article 12 of MLIJ; and article 22 of MLEGI.

²⁵ Recommendation 39.

²⁶ Article 12 (1) of MLIJ.

²⁷ Article 19 (1) of MLCBI.

²⁸ Article 22 (1) of MLEGI.

²⁹ See, e.g. article 19 (1) of MLCBI.

³⁰ Recommendations 44 and 45; articles 19 (3) and 22 (3) of MLCBI; article 12 (3) of MLIJ; and article 22 (3) of MLEGI.

³¹ Recommendation 40 (a).

Objectives	Features	Safeguards
4. To preserve the ability to grant effective relief by final judgment or award	<p>(b) Staying execution against the debtor's assets (or the assets of the enterprise group member participating in a planning proceeding),</p> <p>(c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor (or of the enterprise group member participating in a planning proceeding),</p> <p>(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,</p> <p>(e) Staying the disposition of any assets of any party or parties against whom the insolvency-related judgment has been issued,</p> <p>(f) Granting other legal or equitable relief, as appropriate, within the scope of the insolvency-related judgment,</p> <p>(g) Staying any insolvency proceeding concerning the debtor or the enterprise group member participating in a planning proceeding,</p> <p>(h) Staying the commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations or liabilities of the debtor or enterprise group member participating in a planning proceeding.³²</p>	
Specifics of disclosure measures		
1. To obtain information and evidence about the debtor, its assets and affairs	1. Requests for the disclosure measures should be treated with urgency;	1. The scope of the disclosure measure should be limited to the necessary information and only to information that reasonably appears to be within the respondent's possession, control or access;
2. To identify, and find out the location of, (missing) assets that should be in the insolvency estate	<p>2. The debtor and its directors, officers and other employees and related persons should be ordered to file, including under oath, complete and detailed information about the debtor, its assets wherever located and affairs on a worldwide basis, including transfers of assets and other transactions that took place during the suspect period;³³</p> <p>3. Other persons that have had connections with the debtor or are otherwise deemed capable of providing information concerning the debtor's assets, affairs, rights, obligations or liabilities (e.g. banks, cloud service providers, digital service providers, government agencies, registrars and other persons) should be ordered to disclose promptly such information, including bank accounts and data to gain access and control over the digital assets;</p>	<p>2. For some disclosure measures, the applicant may be required by the (receiving) court to demonstrate non-compliance by the debtor, directors or other persons with provisions of insolvency or related law;</p> <p>3. For some other disclosure measures, the applicant may be required by the (receiving) court to demonstrate the real risk that, without the disclosure measure, the evidence will be destroyed;</p>

³² Recommendation 39; article 19 (1) of MLCBI; article 12 (1) of MLII; articles 20 (1), 22 (1) and 24 (1) MLEGI.

³³ See, e.g. recommendations 110 and 290 and accompanying commentary.

Objectives	Features	Safeguards
3. To assess the need for subsequent ATR steps, such as avoidance or actions against directors, and substantiate them in any ensuing proceedings	4. (Cross-) Examination should be enabled; 5. The taking and preservation of evidence (including electronic) by other means should also be enabled (e.g. inspections by officials, access to government files and registers, search orders); ³⁴ 6. [Upon recognition of the foreign or planning proceeding] Essentially the same access rights to registers and government files should be granted to the foreign representative and the group representative as to locally appointed insolvency representatives and such access should be facilitated; 7. Courts should have the authority to recognize foreign orders for access to information without a full hearing on the merits, absent objections; 8. Requests for recognition and enforcement of judgements related to disclosure measures should be enabled ³⁵ and handled by the receiving States without unreasonable delay.	4. The disclosure measure should not be oppressive, unfair or overly burdensome for the respondent; 5. The law may allow, under certain circumstances, the interested party, or someone that the party trusts, to be present during the inspection or other similar actions; 6. The law may require the applicant to provide indemnification for possible damages that may arise during the inspection or other similar actions; 7. The law may require the applicant to compensate for costs of producing evidence by third parties; 8. The law or courts may impose restrictions on the use of the obtained information, ³⁶ including in other proceedings. ³⁷
Specifics of asset protection measures		
1. To stay execution, individual proceedings and other individual actions with respect to the debtor's assets, rights, obligations or liabilities	1. Requests for the asset protection measures should be treated with urgency; 2. The administration or supervision of the debtor's business or assets may be entrusted, as the case may be, to the provisional insolvency representative, the insolvency representative, the foreign representative, the group representative or another person designated by the court. ³⁸	The court may require the applicant to specify and identify the location of the assets, submit evidence that those assets indeed belong to the insolvency estate or are required for the enforcement of the insolvency estate's claim against the defendant and that, without the asset protection measure sought, there is a serious risk that the assets in question will be hidden, transferred or dissipated.

³⁴ See, e.g. recommendation 120 and accompanying commentary; articles 7, 19 (1) (c) and 21 (1) (d) of MLCBI; articles 20 (1) (e), 22 (1) (f) and 24 (1) (g) of MLEGI.

³⁵ See, e.g. MLIJ and para. 60 (f) of its guide to enactment referring to a judgment for the examination of a director of the debtor where that director is located in a third jurisdiction.

³⁶ E.g. to avoid the disclosure of confidential, privileged or private information or for other reasons.

³⁷ E.g. although in some jurisdictions no right to refuse testimony and no protection against self-incrimination and other privileges, including on confidentiality grounds, may exist, the obtained evidence cannot be used in later criminal proceedings.

³⁸ E.g. recommendations 39, 41, 112, 277 and 278; articles 19 (1) (b) and 21 (1) (e) of MLCBI; articles 20 (1) (d), 22 (1) (e) and 24 (1) (f) of MLEGI.

<i>Objectives</i>	<i>Features</i>	<i>Safeguards</i>
2. To suspend the right to transfer, encumber or otherwise dispose of any assets of the debtor		
3. To preserve and regulate the status quo and prevent (further) dissipation of assets that belong to the insolvency estate		

Specifics of asset recovery measures

To recover the assets that belong to the insolvency estate or their value without delay and with as little costs as possible, including through avoidance	<ol style="list-style-type: none"> 1. Avoidance actions, other actions to render ineffective acts detrimental to creditors as well as other actions for recovery of assets that belong to the insolvency estate or their value should be available and handled in a timely and effective manner to maximize returns;³⁹ 2. The court should be able to order a cash payment to the insolvency estate for the value of the avoided transaction (e.g. where the assets obtained under the avoided transaction cannot be returned);⁴⁰ 3. Upon recognition of a foreign proceeding, the foreign representative should have a standing to initiate actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in the recognizing State, and the exercise of that right is facilitated;⁴¹ 4. Requests for recognition and enforcement of judgments related to avoidance, other actions to render ineffective acts detrimental to creditors as well as other actions for recovery of the insolvency estate assets should be enabled⁴² and handled by the receiving States without unreasonable delay; 	<ol style="list-style-type: none"> 1. The asset recovery should be possible only after a final judgment on ownership and claims to the assets has been rendered; 2. A judgment on ownership and claims to the assets should be rendered only after a hearing on the merits with a prior notice to all parties concerned, unless the court limits or dispenses with the need to provide notice; 3. For avoidance of a transaction that took place between enterprise group members or between an enterprise group member and other related persons, the court may consider the circumstances in which the transaction took place, such as the relationship between the parties to the transaction; the degree of integration between enterprise group members that are parties to the transaction; the purpose of the transaction; whether the transaction contributed to the
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³⁹ Recommendations 87 and 316; article 23 of MLCBI.

⁴⁰ Recommendation 98.

⁴¹ Article 23 (1) of MLCBI.

⁴² E.g. MLIJ and paragraph 60 (a) to (d) of its guide to enactment referring to judgments dealing with the composition of the insolvency estate, avoidance, liability of directors and sums or any other performance owed to the debtor.

Objectives	Features	Safeguards
	<ol style="list-style-type: none"> The realization of all or part of the insolvency estate assets may be entrusted, as the case may be and as appropriate, to the provisional insolvency representative, the insolvency representative, the foreign representative, the group representative or another person designated by the court;⁴³ Upon recognition of a foreign proceeding, whether main or non-main, the distribution of all or part of the debtor's assets located in the recognizing State may be entrusted, at the request of the foreign representative, to the foreign representative or another person designated by the court.⁴⁴ 	<p>operations of the group as a whole; and whether the transaction granted advantages to enterprise group members or other related persons that would not normally be granted between unrelated parties;⁴⁵</p> <ol style="list-style-type: none"> Special rules for calculating the suspect period in case of substantive consolidation may apply;⁴⁶ Before entrusting the distribution of all or part of the debtor's local assets to the foreign representative or another person designated by the court, the court may need to be satisfied that the interests of local creditors are adequately protected;⁴⁷ A separate court authorization may be necessary for removal of the assets outside the State.

D. Supporting measures

Objectives	Features	Safeguards
Enforcement and sanctions		
<ol style="list-style-type: none"> To enforce ATR measures promptly To ensure compliance and deter non-compliance with ATR measures 	<ol style="list-style-type: none"> Enforcement of ATR measures should be prompt and effective;⁴⁸ There must be sanctions for failure to comply with the imposed measures, abuse of process and other appropriate grounds;⁴⁹ Sanctions should be dissuasive and effective. 	<ol style="list-style-type: none"> Sanctions should be proportionate and appropriate; For enforcement, see [<i>cross-reference to the UNIDROIT BPEE project once completed</i>].

⁴³ E.g. recommendations 39, 41, 112, 277 and 278; articles 19 (1) (b) and 21 (1) (e) of MLCBI; articles 20 (1) (d), 22 (1) (e) and 24 (1) (f) of MLEGI.

⁴⁴ Article 21 (2) of MLCBI.

⁴⁵ Recommendation 217.

⁴⁶ Recommendation 228.

⁴⁷ Article 21 (2) of MLCBI.

⁴⁸ See MLIJ and [*cross-reference to the UNIDROIT BPEE project once completed*].

⁴⁹ See, e.g. recommendations 114 and 371.

Objectives	Features	Safeguards
Court-to-court cooperation and coordination tools		
<ol style="list-style-type: none"> 1. To prioritize and expedite consideration of requests for ATR measures 2. To ensure proper coordination of the administration and supervision of the assets and affairs of the debtor and of the affairs of enterprise group members, including across borders and by avoiding granting conflicting or inconsistent ATR measures 	<p>The use of the following tools should be enabled:</p> <ol style="list-style-type: none"> 1. Direct communication by courts, insolvency representatives and a group representative, including for the purpose of requesting ATR-related information and assistance; 2. Conclusion of agreements for coordination of proceedings; 3. Joint hearings or hearings in coordination with other courts; 4. Appointment of a single or the same insolvency representative;⁵⁰ 5. Giving undertakings with respect to the treatment of claims that could be filed in an unopened foreign proceeding for the purpose, inter alia, of avoiding its commencement;⁵¹ 6. The use of informal and electronic means of communication for notification and other purposes; 7. Sharing evidence and written materials, utilizing modern means of communication as far as possible; 8. Requiring original documents only if the authenticity of a document is questioned; 9. Rapid and secure authentication of documents, where required, including via electronic transmission; 10. Recognition and acceptance as authentic of the provisions of statutes, statutory or administrative regulations and court rules of general application applicable to the proceedings in foreign jurisdictions without further proof or exemplification; 11. Accepting without further proof or exemplification that orders made in the foreign proceedings were duly and properly made or entered on or about their respective dates.⁵² 	<p>The following safeguards apply:</p> <ol style="list-style-type: none"> 1. Protection of domestic public policy; 2. Protection of confidential information; 3. Non-interference with the jurisdiction and independence of the courts; 4. Protection of the substantive and procedural rights of the parties, including their right to submit formal objections and to seek review and appeal; 5. Recognition of provisions and their acceptance as authentic (which do not constitute recognition or acceptance of their legal effect or implications).

⁵⁰ For this and the preceding entries, see, e.g. recommendations 239–254, chapter IV of MLCBI and chapter II of MLEGI.

⁵¹ See, e.g. articles 28–32 of MLEGI.

⁵² The remaining entries on the list are from surveyed court-to-court cooperation guidelines. The same applies to the listed safeguards.