



---

**United Nations Commission  
on International Trade Law**  
Thirty-eighth session  
Vienna, 4-15 July 2005

## **Insolvency law**

### **Addendum**

## **Developments in insolvency law: adoption of the UNCITRAL Model Law on Cross-Border Insolvency**

### **Note by the Secretariat**

1. This note provides an update on adoptions of the Model Law on Cross-Border Insolvency occurring subsequent to the date of document A/CN.9/580.
2. On 20 April 2005, the new chapter 15 of the United States Bankruptcy Code was signed into law and will enter into force on 17 October 2005. Chapter 15 incorporates the UNCITRAL Model Law on Cross-Border Insolvency, largely following the terms of the Model Law. A few modifications are noted below.
  - (i) *Scope of the legislation—Model Law article 1*
    3. Section 1501 excludes certain natural persons who may be considered ordinary consumers (by reference to specified debt limitations) who are either citizens or permanent residents of the USA, certain stock and commodity brokers and other entities subject to specialized insolvency regimes under United States law.
  - (ii) *Competent courts—Model Law article 4*
    4. The designation of the competent court is addressed elsewhere in the United States Bankruptcy Code. Section 1504 introduces and emphasizes the policy in favour of a general rule that countries other than the home country of the debtor, where main proceedings would be brought, should usually act through ancillary

---

\* This document is submitted late to reflect recent developments with respect to adoption of the UNCITRAL Model Law on Cross-Border Insolvency.



proceedings in aid of main proceedings, in preference to a system of full bankruptcies in each state where assets are found.

(iii) *Authorization to act abroad—Model Law article 5*

5. Section 1505 varies the automatic authorization for a person or body charged with administering a reorganization or liquidation under the law of the enacting State to act abroad, requiring prior court approval to be obtained.

(iv) *Right of direct access, application to commence and participate in proceedings—Model Law articles 9, 11 and 12*

6. Section 1509 imposes recognition of a foreign representative as a condition to further rights and duties of the foreign representative, which include making an application under article 11 to commence local proceedings and participation in proceedings concerning the debtor under article 12. A provision has been added to ensure that a foreign representative cannot seek relief in United States' courts after being denied recognition. An exception to the requirement for recognition is given for collection of claims which are property of the debtor, such as accounts receivable.

(v) *Notification of foreign creditors—Model Law article 14*

7. Section 1514 provides for additional time to be given to foreign creditors with respect to notice and submission of claims.

(vi) *Relief available on recognition—Model Law article 20*

8. Section 1520 imports to Chapter 15 the relief available from existing provisions of the Bankruptcy Code, which is broader than that available under article 20. It includes, for example, grounds for providing relief from the stay, and an automatic right for the foreign representative of main proceedings to operate the debtor's business. While it allows an action to be commenced to preserve a claim, it does not permit the action to be further pursued. The stay does not apply to commencement of full insolvency proceedings in the United States, although those proceedings would be subject to the provisions on coordination and cooperation.

(vii) *Actions to avoid acts detrimental to creditors—Model Law article 23*

9. Section 1523 confers standing on a recognized foreign representative to initiate an avoidance action only where a case is pending under another part of the Bankruptcy Code. The section leaves it to the court to determine the nature and extent of any such action and the national law that may apply to such action.

(viii) *Coordination of proceedings—Model Law article 28*

10. Section 1528 makes it clear that in addition to the provisions of article 28, the court may dismiss or suspend United States proceedings in order to cooperate and coordinate with foreign proceedings.