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## Insolvency Law

### Cross-border recognition and enforcement of insolvency related judgements

#### Note by the Secretariat

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## Introduction

1. At its forty-seventh session (2014), the Commission gave Working Group V (Insolvency Law) a mandate to develop a model law or model legislative provisions to provide for the recognition and enforcement of insolvency-related judgements.
2. At its forty-sixth session in December 2014, Working Group V (Insolvency Law) considered a number of issues relevant to the development of a legislative text on the recognition and enforcement of insolvency-related judgements, including the types of judgements that might be covered, procedures for recognition and grounds to refuse recognition. The Working Group agreed that the text should be developed as a stand-alone instrument, rather than forming part of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law), but that the Model Law provided an appropriate context for the new instrument.
3. At its forty-seventh session, the Working Group considered the first draft of a model law to be given effect through enactment by a State (A/CN.9/WG.V/WP.130). The content and structure of the draft text drew upon the Model Law, as suggested by the Working Group at its forty-sixth session (A/CN.9/829, para. 63) and sought to give effect to the conclusions of the Working Group at its forty-sixth session relating to the types of judgement to be included (A/CN.9/829, paras. 54 to 58), procedures for obtaining recognition and enforcement (A/CN.9/829, paras. 65 to 67) and the grounds for refusal of recognition (A/CN.9/829, paras. 68 to 71).
4. At its forty-seventh session, the Working Group had a preliminary exchange of views on draft articles 1 to 10 of the text and made a number of proposals with respect to the drafting (A/CN.9/835, paras. 47-69); draft articles 11 and 12 of that text were not reached due to lack of time and are included in this note as draft articles 12 and 13.
5. At its forty-eighth session, the Working Group considered a revised version of the draft text, which reflected the decisions and proposals made at the forty-seventh session (A/CN.9/WG.V/WP.135). The following text reflects the proposals and decisions made at the forty-eighth session (A/CN.9/864, paras. 54-87). Notes to the draft articles are set forth in footnotes.

## Draft model law on the recognition and enforcement of insolvency-related judgements

### Article 1. Scope of application<sup>1</sup>

#### *Variant 1*

1. This Law applies where:
  - (a) Recognition and enforcement of an insolvency-related judgement is sought in this State by a foreign representative or other person entitled to seek enforcement of such a judgement in connection with a foreign proceeding; or

<sup>1</sup> Variants 1 and 3 of draft art. 1 have been retained in accordance with a decision at the forty-eighth session (A/CN.9/864, para. 58). The text proposed at the forty-eighth session (A/CN.9/864, para. 56) for addition to draft art. 1 appears below as art. 3 bis. The second text proposed at the forty-eighth session (A/CN.9/864, para. 59) for addition to draft art. 1 appears below as art. 3 ter.

(b) *Variant 1* [Recognition and enforcement of an insolvency-related judgement is sought in a foreign State in connection with a proceeding under the law of this State.]

(b) *Variant 2* [Authorization to seek [recognition and] enforcement of an insolvency-related judgement in a foreign State [is [requested] [required]].<sup>2</sup>

2. This Law does not apply to [...].

*Variant 3*

1. [This Law applies to the recognition and enforcement of an insolvency-related judgement issued in a proceeding taking place in a State that is different to the State of execution.]

2. This Law does not apply to [...].

## Article 2. Definitions

For the purposes of this 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 a debtor are or were subject to control or supervision by [a foreign] court for the purpose of reorganization or liquidation;

(b) “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;

(c) “Judgement” means

*Variant 1*<sup>3</sup> any judicial or administrative decision, whatever it may be called, including a decree or order, a determination of costs and expenses provided

<sup>2</sup> Variant 2 of draft art. 1, para. (b) is based on the heading of draft art. 5 of this text as proposed at the forty-eighth session (A/CN.9/864, para. 60). Draft art. 5, which repeats art. 5 of the Model Law, provides the necessary authorization, should it be required.

<sup>3</sup> Variant 1 of draft art. 2, para. (c) remains as drafted in A/CN.9/WG.V/WP.135. Variant 2 of para. (c) includes an additional phrase in square brackets that has been added to address the concern expressed about the inclusion of administrative decisions unless they have the same effect as a judicial decision (A/CN.9/864, paras. 62-63). The concern with respect to effect and enforceability of a judgement in the State in which it was issued is addressed in draft art. 10 bis. Administrative decisions were included in para. (c) for the same reason as administrative authorities were included in the Model Law i.e. that in some States, administrative authorities, rather than the courts, are competent to control or supervise a foreign proceeding. Accordingly, omitting any reference to such authorities or the decisions they issue might create a gap for some States (see A/CN.9/835, para. 56). Variant 2 also includes additional language (the proviso in the second sentence) to reflect changes made to the definition of the term “judgement” in the draft text emanating from the fifth session (October 2015) of the Hague Conference on Private International Law’s working group on the judgements project (art. 3, subpara. 1(b)) (available from [www.hcch.net/en/projects/legislative-projects/judgments/recent-developments](http://www.hcch.net/en/projects/legislative-projects/judgments/recent-developments)). Reference to the decision being made “on the merits” (language that is included in the Hague draft) has not been included in para. (c); it was not initially included in the definition contained in the first

that the determination related to a judicial or administrative decision, and any decision ordering [provisional] [or] [protective [and conservatory]] measures.

*Variant 2* [any decision, whatever it may be called, issued by a court or administrative authority, provided an administrative decision has the same effect as a decision issued by a court. For the purposes of this definition, a decision includes a decree or order, and a determination of costs and expenses by the court [provided that the determination relates to a decision that may be recognized or enforced under this Law,] and any decision ordering [provisional] [or] [protective [and conservatory]] measures].

(d) “Insolvency-related judgement” means [a judgement that is closely related to a foreign proceeding and was issued after the commencement of that proceeding. A judgement is presumed to be “closely related to a foreign proceeding” if it has an effect upon the insolvency estate<sup>4</sup> of the debtor and either is based on a law relating to insolvency or, due to the nature of its underlying claims, would not have been issued without the commencement of the foreign proceeding.

An insolvency-related judgement would include any equitable relief, including the establishment of a constructive trust, provided in that judgement or required for its enforcement. Insolvency-related judgements may include, [inter alia,] judgements concerning any of the following matters:]<sup>5</sup>

- (i) Turnover of property of an insolvency estate;
- (ii) Sums and assets due to an insolvency estate [pursuant to an obligation arising after the commencement of the foreign proceeding];<sup>6</sup>
- (iii) Sale of assets by an insolvency estate;
- (iv) Requirements for accounting related to a foreign proceeding;
- (v) Overturn of transactions involving the debtor or assets of an insolvency estate that have had the effect of either reducing the value of the estate or upsetting the principle of equitable treatment of creditors;<sup>7</sup>
- (vi) Modification or enforcement of a stay of actions in a foreign proceeding;<sup>8</sup>

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draft of the instrument (A/CN.9/WG.V/WP.130), but was an element of the chapeau of draft art. 9 relating to recognition and enforcement, which should take place “without review of the merits of the judgement”. Those words have been deleted in accordance with a proposal at the forty-eighth session (A/CN.9/864, para. 76) to simplify the chapeau of art. 9. References to provisional measures are retained in both variants for further consideration (note art. 7 bis).

<sup>4</sup> “Insolvency estate” is defined in the Legislative Guide, Introduction, para. 12 (t) as meaning: “assets of the debtor that are subject to the insolvency proceedings.”

<sup>5</sup> Variant 1 of the chapeau of draft art. 2, para. (d) as set forth in A/CN.9/WG.V/WP.135 has been retained; variant 2 has been deleted (A/CN.9/864, para. 69).

<sup>6</sup> Draft art. 2, subpara. (d) (ii) has been revised in accordance with A/CN.9/864, paras. 67, 69. The draft language in square brackets reflects a proposal to limit the article to cover only post-commencement obligations, rather than pre- and post-commencement obligations. The Working Group agreed that proposal required further consideration (A/CN.9/864, para. 65).

<sup>7</sup> Draft art. 2, subpara. (d) (v) reflects variant 1 as set forth in A/CN.9/WG.V/WP.135; variant 2 has been deleted (A/CN.9/864, para. 69).

(vii) Validity [and effectiveness] of a secured claim;<sup>9</sup>

(viii) A cause of action pursued by a creditor with approval of the court,<sup>10</sup> based on [an insolvency] [a foreign] representative's decision not to pursue that cause of action [where any judgement arising from that action would otherwise be enforceable under this Law];<sup>11</sup>

(ix) Liability of a director in the period approaching insolvency [that could be pursued by or on behalf of an insolvency estate];<sup>12</sup>

(x) Confirmation of a plan of reorganization or liquidation or approval of a [composition] [voluntary restructuring agreement] [in a foreign proceeding];

(xi) The discharge of a particular debt;

(xii) Recognition of the discharge of a debtor;<sup>13</sup> and

(xiii) [A cause of action [related to insolvency] pursued by a party to whom it has been assigned by a foreign representative in accordance with the applicable law] [where any judgement arising from that action would otherwise be enforceable under this Law].

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

(f) "Proceeding" means procedures and hearings before a court or administrative authority that performs a judicial function.<sup>14</sup>

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<sup>8</sup> Draft 2, subpara. (d) (vi) was noted as raising the same issues as the references to provisional measures (see A/CN.9/864, para. 68 and the last sentence of footnote 3 above).

<sup>9</sup> The language in square brackets added to draft art. 2, subpara. (d) (vii) responds to a suggestion made at the forty-eighth session (A/CN.9/864, para. 68) and more accurately reflects the terminology of the UNCITRAL Legislative Guide on Secured Transactions, making it clear that effectiveness between parties and against third parties is covered. A reference to the relevant chapters of the Legislative Guide on Secured Transactions — Ch II, paras. 1-71 and Ch. III, paras. 1-74 — will be included in a footnote to the final text.

<sup>10</sup> It may be appropriate to add language clarifying which court is being referred to e.g. the foreign court in which the foreign insolvency proceeding commenced.

<sup>11</sup> The additional language in square brackets in draft art. 2, subparas. (d) (viii) and (xiii) reflects proposals made at the forty-eighth session (A/CN.9/864, para. 68) to qualify the otherwise broad language of these subparas. Subpara. (d) (xiv) has been deleted (A/CN.9/864, para. 69).

<sup>12</sup> The additional language in square brackets in draft art. 2, subpara. (d) (ix) reflects a proposal made at the forty-eighth session (A/CN.9/864, paras. 68, 69).

<sup>13</sup> Draft art. 2, subparas. (d) (x)-(xii) remain for further consideration; in response to a suggestion at the forty-eighth session that they should be deleted because they were covered by the Model Law, it was suggested that there may be situations in which they are not so covered (A/CN.9/864, para. 68).

<sup>14</sup> The definition in draft art. 2, para. (f) is based on variant 3 of A/CN.9/WG.V/WP.135; variants 1 and 2 have been deleted. Additional definitions in draft art. 2, paras. (g) "recognition" and (h) "enforcement" have also been deleted (see A/CN.9/864, para. 70).

**[Article 3. International obligations of this State<sup>15</sup>**

To the extent that this 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 3 bis. International obligations of this State<sup>16</sup>**

1. This [Law] shall not apply to an insolvency-related judgement where there is a treaty [in force] concerning the recognition or enforcement of civil and commercial judgments (whether concluded before or after [this Law] comes into force), and that treaty applies to the insolvency-related judgement.

2. An insolvency-related judgement is to be treated for the purposes of paragraph 1 of this article as falling within the class of judgments to which a treaty applies:

(a) Even where the particular insolvency-related judgement is not enforceable under the treaty because of the particular circumstances of the case; and

(b) Whether or not the State has adopted the treaty.]

**[Article 3ter. Conflict between the law of this State and the law of the State in which the insolvency-related judgement was issued<sup>17</sup>**

In the event of a conflict between the application of this Law and the law of the State where the insolvency-related judgement was issued, the provisions of this Law prevail.]

**Article 4. Competent court or authority<sup>18</sup>**

The functions referred to in this Law relating to recognition and enforcement of insolvency-related judgements shall be performed by [*specify the court, courts, authority or authorities competent to perform those functions in the enacting State*].

**Article 5. Authorization to seek enforcement of an insolvency-related judgement 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.

<sup>15</sup> Draft art. 3 repeats art. 3 of the Model Law; the Working Group agreed to retain arts. 3-7 of the Model Law in this text (A/CN.9/864, para. 71).

<sup>16</sup> Draft art. 3 bis was proposed at the forty-eighth session of the Working Group (A/CN.9/864, para. 56). The words “insolvency-related” have been added to limit the application of the article to the specific subject matter of the draft text.

<sup>17</sup> Draft art. 3 ter was proposed at the forty-eighth session (A/CN.9/864, para. 59) to address concerns relating to the effect of draft art. 1, subpara. 1(b).

<sup>18</sup> Draft art. 4, which is based on art. 4 of the Model Law, has been revised for consistency with the subject matter of this draft instrument. The footnote to art. 4 of the Model Law has been omitted.

**Article 6. Additional assistance under other laws**

Nothing in this 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 6 bis. Public policy exception]<sup>19</sup>**

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to public policy [or] [including] the fundamental principles of procedural fairness of this State.]

**Article 7. Interpretation**

In the interpretation of this 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.

**[Article 7 bis. Effect and enforceability of an insolvency-related judgement in the State in which it was issued]<sup>20</sup>**

An insolvency-related judgement shall be recognized and enforced only if it has effect and is enforceable in the State in which it was issued.]

**Article 8. Application for recognition and enforcement of an insolvency-related judgement<sup>21</sup>**

1. A foreign representative or other person entitled under the law of the State in which the judgement was issued to seek enforcement of an insolvency-related judgement may apply to the court in this State for recognition and enforcement of that judgement, including by way of defence.
2. An application for recognition and enforcement of an insolvency-related judgement shall be accompanied by:
  - (a) A [certified] copy of the insolvency-related judgement;

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<sup>19</sup> Draft art. 6 bis has been added in accordance with a proposal at the forty-eighth session (A/CN.9/864, paras. 77, 81) and replaces draft arts. 9, para. (f) and 10, paras. (d) and (e), which have been deleted in this version. Although the draft is reproduced as proposed, it may be appropriate to delete the word “or” and retain the word “including” to clarify that fundamental principles of procedural fairness can be considered as part of public policy.

<sup>20</sup> The addition of draft art. 7 bis was suggested at the forty-eighth session to address the issue of finality of a judgement and the inclusion of administrative decisions and provisional measures under draft art. 2, para. (c) (A/CN.9/864, paras. 62-65). It is based on art. 4, para. 3 of the text emanating from the fifth meeting (October 2015) of the Hague Conference on Private International Law’s working group on the judgements project (available as indicated in footnote 3). Inclusion of this draft article may necessitate additions to draft art. 8, e.g. a requirement to provide any documents necessary to establish that the judgement has effect or, where applicable, is enforceable in the State in which it was issued (see Hague working group text, art. 11, para. 1 (c)).

<sup>21</sup> This version of draft art. 8 is based upon the decision of the Working Group at its forty-eighth session (A/CN.9/864, para. 72) to retain variant 2 and delete variant 1.

(b) [A certified statement of the [final character of the] insolvency-related judgement;] [Information relating to any current review of the insolvency-related judgement, including whether any notice of intended appeal has been received, the time limit (if any) for seeking review has expired in the State in which it was issued, and whether the judgement is enforceable in the State in which it was issued];<sup>22</sup>

(c) *Deleted*;

(d) Evidence [as required by the law of this State]<sup>23</sup> that the party against whom relief is sought was provided notice of the application in this State for recognition and enforcement of the insolvency-related judgement.

23. The court may require translation of documents supplied in support of the application for recognition and enforcement of the insolvency-related judgement into an official language of this State.

34. The court is entitled to presume that documents submitted in support of the application for recognition and enforcement of the insolvency-related judgement are authentic, whether or not they have been legalized.

**[Article 8 bis. Postponement or refusal of recognition and enforcement]<sup>24</sup>**

1. Recognition and enforcement may be postponed or refused if the insolvency-related judgment is the subject of review in the State in which it was issued or if the time limit for seeking ordinary review in that State has not expired.

2. A refusal under paragraph 1 does not prevent a subsequent application for recognition and enforcement of the judgment.]

<sup>22</sup> The requirement for the foreign insolvency-related judgement to be final and binding that was initially included in draft arts. 2, para. (c) and 10, paras. (f) and (g) has now been deleted; arts. 2 bis and 2 ter address aspects of that requirement. Accordingly, in order to align art. 8, para. 2 with the definition of judgement as proposed by the Working Group (A/CN.9/864, para. 72), the first words in square brackets in para. (b) could be deleted. However, in view of new art. 8 bis, it may be appropriate to require that some information be provided to the receiving court as to whether the judgement is currently subject to review, whether any notice of intended appeal has been received, whether the time limit (if there is one) for seeking review has expired in the State of issue and whether it is enforceable in the State of issue. Language to that effect has been added for consideration.

<sup>23</sup> The addition of the words in square brackets to art. 8, subpara. 2 (d) was suggested at the forty-eighth session (A/CN.9/864, para. 74).

<sup>24</sup> Following a suggestion made at the forty-eighth session (A/CN.9/864, paras. 75 and 79), draft art. 8 bis repeats the first two sentences of art. 4, para. 4 of the text emanating from the fifth meeting (October 2015) of the Hague Conference on Private International Law's working group on the judgements project. The last sentence of art. 4, para. 4 of that Hague Conference text includes the following language — "In such cases, the court addressed may also make enforcement conditional on the provision of such security as it shall determine." The Working Group may wish to consider whether that language is required in this text and if so, whether it should apply both to recognition and enforcement. The Working Group may also wish to consider the need to align this draft article with whatever language is adopted for draft art. 8, para. 2(b).

**Article 9. Decision to recognize and enforce an insolvency-related judgement**

An insolvency-related judgement shall be recognized and enforced provided:

- (a) *Deleted*;
- (b) The person seeking enforcement of the insolvency-related judgement is a person within the meaning of article 2, subparagraph (b) or another person entitled to seek enforcement of the judgement under article 8, paragraph 1;
- (c) The requirements of article 8, paragraph 2 are met;
- (d) The court from which recognition is sought is the court referred to in article 4; and
- (e) Articles 8 bis and 10 do not apply.<sup>25</sup>

**Article 10. Grounds to refuse recognition of an insolvency-related judgement**

Recognition and enforcement of an insolvency-related judgement may be refused if:

- (a) The insolvency-related judgement is subject to review in the originating State or the time limit for seeking review has not expired and the originating State would not enforce the insolvency-related judgement because of the availability of such review;<sup>26</sup>
- (b) The party against whom the proceeding giving rise to the insolvency-related judgement was instituted:
  - (i) Was not notified of the institution of that proceeding in sufficient time and in such a manner as to enable a defence to be arranged, unless the party entered an appearance and presented their case without contesting notification in the originating court, provided that the law of the originating State permitted notification to be contested; or
  - (ii) Was notified of the institution of that proceeding in a manner that is incompatible with fundamental principles of this State concerning service of documents;
- (c) The insolvency-related judgement was obtained by fraud in connection with a matter of procedure;
- (d) and (e) *Deleted*<sup>27</sup>
- (f) The insolvency-related judgement is inconsistent with a prior judgement issued in this State in a dispute involving the same parties;

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<sup>25</sup> Draft art. 9, para. (f), which provided that the insolvency-related judgement could be recognized and enforced unless recognition of the proceeding in which the judgement was issued had been refused on public policy grounds, has been deleted (A/CN.9/864, para. 77) and a general article along the lines of art. 6 of the Model Law included as draft art. 6 bis.

<sup>26</sup> The Working Group agreed to retain draft art. 10, para. (a) (A/CN.9/864, para. 79); since this issue is now addressed by draft art. 8 bis, para. (a) may not be required.

<sup>27</sup> Draft art. 10, paras. (d) and (e) have been deleted as agreed (A/CN.9/864, paras. 77 and 81) and replaced by draft art. 6 bis.

(g) The insolvency-related judgement is inconsistent with a prior judgement issued in another State involving the same parties, provided that the earlier judgement fulfils the conditions necessary for its recognition in this State;

(h) Recognition and enforcement of the insolvency-related judgement would interfere with the administration of the insolvency proceedings or would be inconsistent with a stay or other order entered in insolvency proceedings in this or another State;<sup>28</sup>

[(i) *New variant 1*:<sup>29</sup> The insolvency-related judgement was not issued by a court in the State of the [judgement] debtor's centre of main interests or by a court which would have had jurisdiction in accordance with the law of this State concerning recognition and enforcement of the insolvency-related judgment.]

[(i) *New variant 2*: The insolvency-related judgement was not issued by a court that:

[(i) For Model Law enacting States: Was supervising a foreign main proceeding regarding the insolvency of the [party against whom the judgement was issued] [judgement debtor];]

[(ii) Exercised jurisdiction based on the consent of the [party against whom the judgement was issued] [judgement debtor];

[(iii) Exercised jurisdiction on a basis on which [a receiving court could have exercised jurisdiction under its own law] [a court in this State could have exercised jurisdiction]; or

[(iv) Exercised jurisdiction on a basis that was [not inconsistent] [consistent] with the law of this State.]

[(j) The insolvency-related judgement adversely affects the interests of creditors and other interested persons in this State who did not, directly or through an appropriate representative, participate in the foreign proceeding, and who could not reasonably be expected to have participated in the foreign proceeding.]<sup>30</sup>

<sup>28</sup> Draft art. 10, para. (h) is based upon variant 1 as set forth in A/CN.9/WG.V/WP.135. Variant 2 has been deleted (A/CN.9/864, para. 83).

<sup>29</sup> Previous variants 1, 2 and 3 of draft art. 10, para. (i) as contained in A/CN.9/WG.V/WP.135 have been deleted. The new variants 1 and 2 reflect proposals made at the forty-eighth session (A/CN.9/864, paras. 84-86).

<sup>30</sup> The previous version of draft art. 10, para. (j) has been deleted and a new para. (j) added in accordance with a proposal at the forty-eighth session (A/CN.9/864, para. 86) to address a concern that if the provision were to be limited to local creditors (i.e. creditors in the enacting State) it might be narrow. It may be of assistance to note art. 11 of the Model Law and the Guide to Enactment and Interpretation, para. 198, which indicates the inadvisability of limiting such a provision to local creditors and the difficulties of crafting a definition of such creditors without discriminating against certain creditors on the basis of, for example, place of business or nationality.

**[Article 10 bis. Equivalent effect<sup>31</sup>**

1. An insolvency-related judgment recognized or enforceable under this Law shall be given the same effect it has in the State in which it was issued.
2. If the insolvency-related judgment provides for relief that is not available under the law of this State, that relief shall, to the extent possible, be adapted to relief that is equivalent to, but does not exceed, the effect it has under the law of the State in which it was issued.]

**[Article 11. Protection of creditors and other interested persons<sup>32</sup>**

In recognizing and enforcing an insolvency-related judgement under article 9, the court must be satisfied that the interests of the creditors and other interested persons, including the judgement debtor, are adequately protected.]

**[Article 12. Severability<sup>33</sup>**

Recognition and enforcement of a severable part of an insolvency-related judgement shall be granted where recognition and enforcement of that part is applied for, or only part of the judgement is capable of being recognized and enforced under this Law.]

**Article 13. Provisional relief<sup>34</sup>**

1. From the time recognition and enforcement of an insolvency-related judgement is sought until a decision is made, the court may grant relief of a provisional nature where relief is urgently needed, including:
  - (a) Staying the disposition of any assets of any party or parties against whom the insolvency-related judgement has been issued; or
  - (b) Granting other legal or equitable relief, as appropriate, within the scope of the insolvency-related judgement.

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<sup>31</sup> The addition of draft art. 10 bis was suggested at the forty-eighth session to address various concerns about differences that might occur between the relief available under the law of the originating State and that available under the law of the receiving State (A/CN.9/864, paras. 64-65).

<sup>32</sup> As requested by the Working Group (A/CN.9/864, para. 79), draft art. 11 is based upon art. 22, para. 1 of the Model Law, with some modification to be consistent with the subject matter of this draft instrument. The draft art. reflects the basic principle of art. 22, para. 1, without providing for (i) the imposition of conditions on recognition and enforcement, or (ii) the court to modify or terminate recognition or enforcement (that is, art. 22, paras. 2 and 3). If this draft art. is to be retained, the Working Group may wish to consider the scope of such a safeguard — whether it should apply generally to all insolvency-related judgements as drafted, or be limited to specific judgements referred to in draft art. 2.

<sup>33</sup> Draft art. 12 is based on art. 14 of the draft emanating from the fifth session (October 2015) of the Hague Conference on Private International Law's working group on the judgements project. It was previously included in A/CN.9/WG.V/WP.130 as art. 11, but not considered at the forty-seventh session for lack of time. It is included in this draft for the Working Group's consideration.

<sup>34</sup> Draft art. 13 was previously included in A/CN.9/WG.V/WP.130 as art. 12, but not considered at the forty-seventh session for lack of time. It is included in this draft for the Working Group's consideration.

2. *[Insert provisions (or refer to provisions in force in the enacting State) relating to notice.]*
  3. Unless extended by the court, relief granted under this article terminates when a decision on recognition and enforcement of the insolvency-related judgement is made.
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