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## Recognition and enforcement of insolvency-related judgments: draft model law

Note by the Secretariat

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\* Reissued for technical reasons on 19 December 2017.



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## I. 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 judgments.<sup>1</sup>
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 judgments, including the types of judgments 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 judgment 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 were included as draft articles 12 and 13 of the text considered at the forty-ninth session (A/CN.9/WG.V/WP.138). At its forty-eighth, forty-ninth, fiftieth and fifty-first sessions (A/CN.9/WG.V/WP.135, 138, 143 and 145 respectively), the Working Group considered revised versions of the draft text, which reflected the decisions and proposals made at the forty-seventh, forty-eighth, forty-ninth and fiftieth sessions respectively (A/CN.9/835, 864, 870 and 898 respectively).
5. The draft text below reflects the discussion and conclusions at the fifty-first session and the revisions the Secretariat was requested to make as set forth in document A/CN.9/903, together with various suggestions and proposals arising from the Secretariat's work on the draft text. Notes on the draft articles are set out following the text of the article.
6. The Working Group may wish to consider the use of the phrases "recognition and enforcement" and "recognition or enforcement" throughout the draft text to determine whether the correct formulation is used in each case. In that regard, the Working Group might note paragraphs 22 to 24 of the draft guide to enactment contained in document A/CN.9/WG.V/WP.151, which explains the use of the phrase "recognition and enforcement", noting that enforcement is not necessarily required in all cases.

## II. Draft model law on cross-border recognition and enforcement of insolvency-related judgments: revised text

### Preamble

1. The purpose of this Law is:
  - (a) To create greater certainty for parties in regard to their rights and remedies for [recognition and] enforcement of insolvency-related judgments;

<sup>1</sup> *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 155.

- (b) To avoid the duplication of proceedings;
- (c) To ensure timely and cost-effective recognition and enforcement of insolvency-related judgments;
- (d) To promote comity and cooperation between jurisdictions regarding insolvency-related judgments;
- (e) To protect and maximize the value of insolvency estates; and
- (f) Where legislation based on the Model Law on Cross-Border Insolvency has been enacted, to complement that legislation.

2. The purpose of this Law is not:

- (a) To [replace or] displace other provisions of the law of this State with respect to recognition of insolvency proceedings that would otherwise apply to an insolvency-related judgment;
- (b) To replace [or displace] legislation enacting the Model Law on Cross-Border Insolvency or limit the application of that legislation;
- (c) To apply to the recognition and enforcement in the enacting State of an insolvency-related judgment issued in the enacting State; or
- (d) To apply to the judgment commencing the insolvency proceeding to which the judgment is related.

#### **Notes on the Preamble**

1. The preamble has been added in accordance with text proposed at the fifty-first session (A/CN.9/903, paras. 58, 62, 76). The words “recognition and” have been added to subparagraph 1(a) of the Preamble for reasons of consistency. The drafting of subparagraph (e) has been revised to the plural in order to address any confusion as to which insolvency estate is being referred to; in essence, it refers to an overarching goal of protecting and maximizing the value of insolvency estates in general.
2. It may be appropriate to align the terms used in subparagraphs 2(a) and (b) to “replace” or “displace” or to use both “replace or displace”.
3. The current drafting of subparagraph 2(d) appears to be somewhat confusing because of the repetition of the word “judgment”. The Working Group may wish to consider possible redrafting by replacing the first “judgment” with the word “order” or deleting the words “to which the judgment is related”, thus leaving subparagraph (d) to read: “To apply to a judgment commencing an insolvency proceeding”. This would align the Preamble with the drafting of article 2, subparagraph (d) 2.

#### **Article 1. Scope of application**

1. This Law applies to the recognition and enforcement of an insolvency-related judgment issued in a proceeding taking place in a State that is different to the State in which recognition and enforcement are sought.
2. This Law does not apply to [...].

#### **Article 2. Definitions**

For the purposes of this Law:

- (a) “Insolvency proceeding” means a collective judicial or administrative proceeding, 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 court for the purpose of reorganization or liquidation;
- (b) “Insolvency representative” means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer

the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the insolvency proceeding;

(c) "Judgment" means any decision, whatever it may be called, issued by a court or administrative authority, provided an administrative decision has the same effect as a court decision. For the purposes of this definition, a decision includes a decree or order, and a determination of costs and expenses by the court. An interim measure of protection is not to be considered a judgment for the purposes of this Law;

(d) "Insolvency-related foreign judgment" means a judgment that:

(i) [Is related to] [Derives directly from or is closely connected to] [Stems intrinsically from or is materially associated with] an insolvency proceeding;

(ii) Was issued on or after the commencement of the insolvency proceeding to which it is related; and

(iii) Affects the insolvency estate;

[and subparagraphs (i), (ii) and (iii) shall apply irrespective of whether or not the proceeding to which the judgment is related has [been concluded] [closed].]

For the purposes of [this definition] [subparagraph (d)]:

1. An "insolvency-related foreign judgment" includes a judgment issued in a proceeding in which the cause of action was pursued by:

(a) A creditor with approval of the court, based upon the insolvency representative's decision not to pursue that cause of action; or

(b) The party to whom it has been assigned by the insolvency representative in accordance with the applicable law;

and the judgment on that cause of action would otherwise be enforceable under this Law; and

2. An "insolvency-related foreign judgment" does not include a judgment commencing an insolvency proceeding.

[3. Subparagraphs (d)(i), (ii) and (iii) shall apply irrespective of whether or not the proceeding to which the judgment is related has [been concluded] [closed].]

#### Notes on article 2

4. The definition of "judgment" in subparagraph (c) has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 66-67), deleting the words "on the merits", retaining the words referring to an administrative authority and revising the final sentence.

5. The definition of "insolvency-related foreign judgment" has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 68-73, 77), adding two additional variants in square brackets to subparagraph (d)(i); retaining the words "on or after" in subparagraph (d)(ii); deleting the words "interests of the" in subparagraph (d)(iii) and adding the clarification following subparagraph (d)(iii) to address the possibility that by the time recognition and enforcement of a judgment is sought, the related insolvency proceedings may have closed or concluded; the Working Group may wish to consider whether the reference should be to conclusion or to closure of that proceeding. Such closure should not affect recognition or enforcement of the judgment. The examples of judgments previously set forth in footnote 9 of A/CN.9/WG.V/WP.145 have been included in the draft guide to enactment (see para. 54).

6. To simplify the somewhat awkward drafting of subparagraph (d), in particular the numbering, the Working Group may wish to consider whether the words "and subparagraphs (i), (ii) and (iii) shall apply irrespective of whether or not the proceeding to which the judgment is related has been concluded" might be added as

a new subparagraph to the clause beginning “For the purposes of ...”, as shown in square brackets in new paragraph 3.

7. The alternative words “[subparagraph (d)]” have been added to make it clear that paragraphs 1 and 2 apply only to the definition in that subparagraph.

### **Article 3. International obligations of this State**

1. 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.

2. This Law shall not apply to a judgment 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 judgment.

#### **Notes on article 3**

8. The Working Group agreed to retain article 3, paragraph 2 (formerly art. 3 bis) without square brackets (A/CN.9/903, para. 78) and to incorporate it into article 3.

9. Since the first part of article 3, paragraph 2 refers to a treaty being “in force”, the Working Group may wish to consider whether the word “concluded” should be amended to refer to the entry into force of that treaty for reasons of consistency. The relevant point in time may not be the date of conclusion of the treaty, but rather the date it entered into force; if the treaty is already in force, as specified in the opening words of the paragraph (i.e. “where there is a treaty in force ...”), the date of its conclusion is potentially irrelevant.

10. A further issue that might be considered with respect to paragraph 2 is that while paragraph 1 refers to an inconsistency between the model law and the treaty, paragraph 2 does not require any such inconsistency. The Working Group may wish to consider how this provision would apply in States that may have several regimes for recognition and enforcement of judgments and in some circumstances might permit an applicant to choose the most favourable of those regimes, irrespective of whether it was treaty-based or based upon this model law; applicants in some States might prefer to use the specialized provisions provided by this model law rather than a more general treaty in force that did not include such provisions.

### **Article 4. Competent court or authority**

The functions referred to in this Law relating to recognition and enforcement of an insolvency-related foreign judgment shall be performed by [*specify the court, courts, authority or authorities competent to perform those functions in the enacting State*] and by any other court before which the issue of recognition is raised as a defence or as an incidental question in the course of proceedings.

### **Article 5. Authorization to act in another State in respect of an insolvency-related judgment issued in this 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 another State with respect to an insolvency-related judgment issued in this State, as permitted by the applicable foreign law.

#### **Notes on article 5**

11. Article 5 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 22), retaining language referring to authorization to act in another State and conforming the title to that language.

**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 insolvency representative under other laws of this State.

**Notes on article 6**

12. In view of the fact that recognition and enforcement under article 10 and provisional relief under article 11 can both be sought by a foreign representative, as well as other qualified persons, the Working Group may wish to consider whether it might be appropriate to widen the scope of article 6 to include such persons. Alternatively, the article might be drafted in a manner that omits any reference to the party to whom the relief might be provided, for example:

“Nothing in this Law limits the power of a court or a [...] to provide additional assistance under other laws of this State.”

**Article 7. Public policy exception**

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 the public policy, including the fundamental principles of procedural fairness, of this State.

**Article 8. 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 9. Effect and enforceability of an insolvency-related foreign judgment in the originating State**

1. An insolvency-related foreign judgment shall be recognized only if it has effect in the originating State and shall be enforced only if it is enforceable in the originating State.
2. Recognition or enforcement of an insolvency-related foreign judgment may be postponed or refused if the judgment is the subject of review in the originating State or if the time limit for seeking ordinary review in that State has not expired. In such cases, the court may also make recognition or enforcement conditional on the provision of such security as it shall determine.

**Notes on article 9**

13. The Working Group may wish to note that the most recent draft issued by the Hague Conference Special Commission on the Recognition and Enforcement of Foreign Judgments of 17 February 2017 provides only for conditional enforcement; it does not address conditional recognition. Article 4, paragraph 4 provides:

“If a judgment referred to in paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired, the court addressed may —

- (a) Grant recognition or enforcement, which enforcement may be made subject to the provision of such security as it shall determine;
- (b) Postpone the decision on recognition or enforcement; or
- (c) Refuse recognition or enforcement.”

14. The Working Group may wish to clarify whether the first use of the word “review” in article 9, paragraph 2 applies to both ordinary and extraordinary review, and that the time limit will only refer to ordinary review. The Working Group may also wish to consider whether the draft article should make it clear that refusal of a

judgment subject to a pending review is without prejudice to a new request for recognition and enforcement of that judgment following resolution of the review.

15. The Working Group may wish to consider whether some greater clarity should be added to the final sentence of article 9, paragraph 2, in particular whether the provision of security is available on the court's own motion or at the request of a party or the insolvency representative. Article 36, paragraph 2 of the UNCITRAL Model Law on International Commercial Arbitration, for example, provides more detail:

“(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.”

#### **Article 10. Procedure for seeking recognition and enforcement of an insolvency-related foreign judgment**

1. An insolvency representative or other person entitled under the law of the originating State to seek recognition and enforcement of an insolvency-related judgment may seek recognition and enforcement of that judgment in this State. The issue of recognition may also be raised as a defence or as an incidental question in the course of proceedings.

2. When recognition and enforcement of an insolvency-related foreign judgment is sought under paragraph 1, the following shall be submitted to the court:

(a) A certified copy of the insolvency-related foreign judgment; [and]

(b) Any documents necessary to establish that the insolvency-related foreign judgment has effect and is enforceable in the originating State, including information on any [current] [pending] review of the judgment; [or]

(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence on those matters acceptable to the court.

3. The court may require translation of documents submitted pursuant to paragraph 2 into an official language of this State.

4. The court is entitled to presume that documents submitted pursuant to paragraph 2 are authentic, whether or not they have been legalized.

5. The court shall ensure that the party against whom relief is sought should be given the right to be heard on the application.

#### **Notes on article 10**

16. Article 10 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 28-32), deleting references to the giving of notice from subparagraph 2 and adding a new paragraph 5. The correct construction of the subparagraphs of paragraph 2 should be 2(a) and (b) or (c), rather than 2(a), (b) and (c) [emphasis added]. The Working Group may wish to consider, given the generality of the reference to “documents” in subparagraph (b), whether subparagraph (c) should refer to both subparagraphs (a) and (b) or would more appropriately be limited to subparagraph (a). If that was the case, the phrase “any other evidence of that matter acceptable to the court” could be added to subparagraph (a) and subparagraph (c) could be deleted.

17. The Working Group may wish to consider whether the word “pending” in subparagraph 2(b) more accurately describes what is intended than the word “current”.

18. The Working Group may wish to consider the drafting of article 10, paragraph 5. Is it the court that is ensuring the party has the right to be heard or is it the law of the enacting State that establishes that right and the court then enables that right to be

exercised by, for example, providing notice or requiring notice to be given? If it is the law of the enacting State that establishes the right (which would be consistent with the approach of Legislative Guide, see rec. 137 and part two, chapt. III, para. 116), the drafting might be amended to:

“When recognition and enforcement are sought, the party against whom relief is sought [should have] [has] the right to be heard.”

The guide to enactment could explain that the court should facilitate the party exercising that right by, for example, requiring notice of the application to be given.

19. The Working Group may also wish to consider whether a provision along the lines of article 16, paragraph 1 of the MLCBI (which provides a presumption as to the accuracy of documents provided to the recognizing court) might be a useful addition to article 10, specifying that the court is entitled to presume the correctness of the information contained in the documents provided under subparagraphs 2(a) and (b).

#### **Article 11. Provisional relief**

1. From the time recognition and enforcement of an insolvency-related foreign judgment is sought until a decision is made, where relief is urgently needed to preserve the possibility of recognizing and enforcing an insolvency-related foreign judgment, the court may, at the request of an insolvency representative or other person entitled to seek recognition and enforcement under article 10, paragraph 1, grant relief of a provisional nature, including:

(a) Staying the disposition of any assets of any party or parties against whom the insolvency-related foreign judgment has been issued; or

(b) Granting other legal or equitable relief, as appropriate, within the scope of the insolvency-related foreign judgment.

2. *[Insert provisions (or refer to provisions in force in the enacting State) relating to notice, including whether notice would be required under this article.]*

3. Unless extended by the court, relief granted under this article terminates when a decision on recognition and enforcement of the insolvency-related foreign judgment is made.

#### **Notes on article 11**

20. Draft article 11 (previously art. 15) has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 52-53), with the addition in paragraph 2 of the phrase after the comma.

21. The Working Group may wish to consider whether the reason for granting interim relief is “to preserve the possibility of recognizing and enforcing a judgment” or whether it is more properly described as being “to preserve the possibility of satisfying or giving effect to the judgment”.

#### **Article 12. Decision to recognize and enforce an insolvency-related foreign judgment**

Subject to articles 7 and 13, an insolvency-related foreign judgment shall be recognized and enforced provided:

(a) The requirements of article 9, paragraph 1 with respect to effectiveness and enforceability are met;

(b) The person seeking recognition and enforcement of the insolvency-related foreign judgment is a person or body within the meaning of article 2, subparagraph (b) or another person entitled to seek recognition and enforcement of the judgment under article 10, paragraph 1;

(c) The application meets the requirements of article 10, paragraph 2; and

(d) Recognition and enforcement is sought from, or arises by way of defence or as an incidental question before, a court referred to in article 4.

#### **Notes on article 12**

22. Article 12 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 33), deleting what was previously subparagraph (e) and replacing it with a cross-reference in the chapeau to both articles 7 and 13. The Working Group may wish to consider whether article 12 should include: (i) further references to the judgment being a judgment of the kind referred to in article 2, subparagraph (d); and (ii) a cross-reference to refusal under article 9, paragraph 2 where the judgment is subject to review.

23. The Working Group may also wish to consider whether a provision along the lines of article 17, paragraph 4 of the MLCBI dealing with modification or termination of recognition when it can be shown that the grounds for granting recognition were fully or partially lacking or have ceased to exist is required in the draft model law or whether article 9 is sufficient to address that issue (see also para. 75 of the draft guide to enactment in document A/CN.9/WG.V/WP.151).

24. Since article 2, subparagraph (b) is a definition of the “insolvency representative”, it may be clearer to use that term in article 12, subparagraph (b) and delete the words “person or body”.

25. The drafting of subparagraph (d) might require some revision since it is only the question of recognition that arises by way of defence:

“(d) Recognition and enforcement is sought from a court referred to in article 4, or the question of recognition arises by way of defence or as an incidental question before such a court.”

#### **Article 13. Grounds to refuse recognition and enforcement of an insolvency-related foreign judgment**

Subject to article 7, recognition and enforcement of an insolvency-related foreign judgment may be refused if:

(a) The party against whom the proceeding giving rise to the judgment 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;

(b) The judgment was obtained by fraud;

(c) The judgment is inconsistent with a judgment issued in this State in a dispute involving the same parties;

(d) The judgment is inconsistent with an earlier judgment issued in another State in a dispute between the same parties on the same subject matter, provided the earlier judgment fulfils the conditions necessary for its recognition and enforcement in this State;

(e) Recognition and enforcement would interfere with the administration of the debtor’s insolvency proceedings or would conflict with a stay or other order issued in insolvency proceedings relating to the same debtor commenced in this State or another State;

- (f) The judgment determines whether:
- [(i) An asset is part of, should be turned over to, or was properly disposed of by the insolvency estate;]
  - [(ii) A transaction involving the debtor or assets of the insolvency estate should be avoided because it upset the principle of equitable treatment of creditors or improperly reduced the value of the estate; or]
  - (iii) A plan of reorganization or liquidation should be confirmed, a discharge of the debtor or of a debt should be granted, or a voluntary or out-of-court restructuring agreement should be approved;
- and the interests of creditors and other interested persons, including the debtor, were not adequately protected in the proceeding in which the judgment was issued;
- (g) The originating court did not satisfy one of the following conditions:
- (i) The court exercised jurisdiction on the basis of the explicit consent of the party against whom the judgment was issued;
  - (ii) The court exercised jurisdiction on the basis of the submission of the party against whom the judgment was issued, namely that the defendant argued on the merits before the court without contesting jurisdiction within the time frame provided in the law of the originating State, unless it was evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;
  - (iii) The court exercised jurisdiction on a basis on which a court in this State could have exercised jurisdiction; or
  - (iv) The court exercised jurisdiction on a basis that was not [inconsistent] [incompatible] with the law of this State;

*States that have enacted legislation based on the Model Law on Cross-Border Insolvency might wish to enact subparagraph (h)*

- (h) The judgment originates from a State whose proceeding is not recognizable under [*insert a reference to the law of the enacting State giving effect to the UNCITRAL Model Law on Cross-Border Insolvency*], unless:
- (i) The insolvency representative of a proceeding that is or could have been recognized under [*insert a reference to the law of the enacting State giving effect to the UNCITRAL Model Law on Cross-Border Insolvency*] participated in the originating proceeding to the extent of engaging in the substantive merits of the claim to which that proceeding related; and
  - (ii) The judgment relates solely to assets that were located in the originating State at the time that proceeding commenced.

### **Notes on article 13**

26. Article 13 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 34-48, 79-82) as indicated in the following notes. The words “subject to article 7” have been added to the chapeau. In subparagraph (b), the words “in connection with a matter of procedure” have been deleted.

27. In subparagraph (e), the words “be inconsistent” have been replaced with the word “conflicts” (A/CN.9/903, para. 79). The Working Group may wish to consider whether a clearer formulation of subparagraph (e) might be to refer to “the insolvency proceedings to which the judgment is related or other insolvency proceedings concerning the same debtor”. As drafted, it is not clear whether the reference to “the debtor’s insolvency proceedings” means the judgment debtor or some other debtor.

28. Subparagraphs (f)(i) and (ii) have been added in square brackets for future consideration (A/CN.9.903, paras. 80-81). Subparagraph (f)(iii) has been revised to include the description of the types of judgment previously included in article 2, subparagraph (e)(v) (A/CN.9/903, para. 42) and the word “recognized” has been replaced with the word “granted” to clarify the meaning of the subparagraph — typically, the judgment in question will grant the discharge rather than determine that the discharge should be recognized. A more direct manner of drafting the subparagraph might be to provide that:

“The judgment (i) confirms a plan of reorganization or liquidation, (ii) grants a discharge of the debtor or of a debt, or (iii) approves a voluntary or out-of-court restructuring agreement.”

Similar changes could be made to subparas. (i) and (ii) if they are to be retained.

29. Subparagraphs (g)(i) and (ii) have been revised in accordance with the text proposed at the fifty-first session (A/CN.9/903, para. 43). The Working Group may wish to consider whether the drafting of the proviso at the end of subparagraph (g)(ii) might be clarified or simplified by adopting drafting along the lines of the proviso at the end of subparagraph (a)(i). If the test in subparagraph (g)(ii) means that it would be evident to the receiving court that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded because the law of the originating State did not permit such an objection or such an exercise, the drafting used in subparagraph (a)(i) would be appropriate. In subparagraph (g)(iv), it may be more appropriate to refer to incompatibility with the law of the receiving State, rather than to inconsistency with that law.

30. An alternative formulation of the introduction to subparagraph (h) might be: *“Optional provision for States that have enacted legislation based on the Model Law on Cross-Border Insolvency.”*

31. Subparagraph (h) has been replaced with text and revisions agreed at the fifty-first session (A/CN.9/903, paras. 45, 82). The Working Group may wish to consider some additional drafting issues on subparagraph (h):

(a) In the chapeau, to add the word “insolvency” before the word “proceeding” and to add the words “or would not be” after the words “is not”;

(b) In subparagraph (i), to replace the word “claim” with the phrase “cause of action”; the word “claim” is not used in the draft text, while the phrase “cause of action” is used in article 2, subparagraph (d) 1 (the definition of “insolvency-related foreign judgment”); and

(c) In subparagraph (b), to replace the words “that proceeding” with the words “the originating proceeding” to give greater clarity to the drafting.

#### **Article 14. Equivalent effect**

1. An insolvency-related foreign judgment recognized or enforceable under this Law shall be given the same effect it [has in the originating State] [would have had if it had been issued by a court of this State].

2. If the insolvency-related foreign 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, its effects under the law of the originating State.

#### **Notes on article 14**

32. The words in square bracket at the end of article 14, paragraph 1 have been added pursuant to a decision at the fifty-first session (A/CN.9/903, para. 83), on the basis that while some States export the effect given to the judgment in the originating State as reflected in the existing text, other States give the judgment the effect it would

have had had it been issued in the recognizing State, as reflected in the additional text in square brackets. Both possibilities are included for further consideration.

#### **Article 15. Severability**

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

*States that have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency will be aware of judgments that may have cast doubt on whether judgments can be recognized and enforced under article 21 of the Model Law. States may therefore wish to consider enacting the following provision:*

**Article X. Recognition of an insolvency-related judgment under** [*insert a cross-reference to the legislation of this State enacting article 21 of the UNCITRAL Model Law on Cross-Border Insolvency*]

Notwithstanding any prior interpretation to the contrary, the relief available under [*insert a cross-reference to the legislation of this State enacting article 21 of the UNCITRAL Model Law on Cross-Border Insolvency*] includes recognition and enforcement of a judgment.

#### **Notes on article X**

33. Article X has been revised in accordance with the text proposed at the fifty-first session ([A/CN.9/903](#), paras. 56, 84-85).