



NATIONAL JUDICIAL INSTITUTE
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Cross-Border Corporate Insolvency

April 23, 2021

Chief Justice Geoffrey Morawetz
Ontario Superior Court of Justice
Toronto, Canada

The 1997 United Nations Commission on International Trade Law ("UNCITRAL") Model Law

Purpose:

- designed to assist States to equip their insolvency laws with a modern legal framework to address cross-border insolvency proceedings
- the focus is on encouraging cooperation and coordination between jurisdictions

Conducting Cross-Border Insolvency Cases

Accountable

The Model Law focuses on four elements identified as key to the conduct of cross-border insolvency cases:

- **Access:** Provisions give representatives of foreign insolvency proceedings and creditors a right of access to the courts.
- **Recognition:** Establish a simplified procedure for recognition of qualifying foreign proceedings.
- **Relief:** The relief considered necessary for the orderly and fair conduct of cross-border insolvencies should be available to assist foreign proceedings.
- **Cooperation and Coordination:** Provisions address cooperation among the courts of States where the debtor's assets are located and coordination of commencement of proceedings concerning that debtor.

Key Points

- a) Foreign proceeding – a collective judicial or administrative proceeding in a foreign state.
- b) Foreign main proceeding – a foreign proceeding taking place in the state where the debtor has its centre of main interests.
- c) Foreign non-main proceeding – a foreign proceeding, other than a foreign main proceeding, taking place in the state where the debtor has an establishment.
- d) Establishment means any place of operations where the debtor carries out non-transitory economic activities with human means and goods or services.

International Obligations

No action may be taken under this Schedule that conflicts with an obligation of [Insert Name of State] arising out of any treaty to which [Insert Name of State] is a party

Public policy exceptions

- Nothing in this Schedule prevents the Supreme Court from refusing to take an action if the action would be manifestly contrary to the public policy of [Insert Name of State]
- Access of foreign representative and creditors to courts in [Insert Name of State]
- Recognition of foreign proceedings and relief
- Relief that may be granted upon application for recognition of a foreign proceeding
 - (1) discretionary interim relief

Effects of Recognition of Foreign Main Proceeding

- a) stay of proceedings
- b) stay of execution against the debtors assets
- c) right to transfer, encumber, or dispose of assets is suspended

Relief that may be granted upon recognition of a foreign proceeding

External Sources

- UNCITRAL Model Law on Cross-Border Insolvency – The Judicial Perspective – Explanatory Text - <https://uncitral.un.org>
- Judicial Insolvency Network – JIN - www.jin-global.org

Case Law:

- re Payless Holdings Inc. LLC, (Re), 2017 ONSC 2242 - Foreign Main Proceeding – Initial Recognition Order
- re Payless Holdings Inc. LLC, (Re), 2017 ONSC 2321 – Foreign Main Proceeding - Supplemental Order
- Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re), 2019 ONSC 1215 – Companies Creditors Arrangement Act – Initial Order