

INTERNATIONAL ASSOCIATION OF INSOLVENCY REGULATORS: MEMBER SURVEY 2006

RECOGNITION OF FOREIGN INSOLVENCY PROCEEDINGS and FOREIGN INSOLVENCY ADMINISTRATORS

[Revise 2 – May 2006]

***Indicates updated from 2006 Survey**

Country and Legislation Application	Provisions	Designated/Recognised/Prescribed Countries	Criteria for Designation/Recognition/Prescribing	Whether Reciprocal Designation etc Required
Australia Bankruptcy Act 1966 <i>Natural persons</i>	Court must act in aid of and be auxiliary to bankruptcy courts of prescribed countries; and may act in aid of and be auxiliary to bankruptcy courts of other countries. Has discretion as to form of assistance.	Canada, Jersey, Malaysia, New Zealand, Papua New Guinea, Singapore, Switzerland, UK and USA.	No criteria prescribed: designation considered on formal request on country by country basis.	No.
Corporations Act 2001 <i>Legal entities</i>	Court must act in aid of and be auxiliary to courts of prescribed countries that have jurisdiction in external administration matters; and may exercise powers on letter of request from other countries.	As above.	As above.	No.

<p>British Virgin Islands Insolvency Act 2003 <i>Natural persons and Legal entities</i></p>	<p>Part XVIII, yet to be brought into force, contains provisions similar to Uncitral Model Law in relation to designated countries only. Under Part XIX, the Court may grant orders in aid of foreign proceedings on application of foreign representative of designated country in relation to collective insolvency proceedings (including interim proceedings); and may apply BVI law or law applicable to designated countries' proceedings.</p>	<p>Australia, Canada Finland, Hong Kong SAR, Japan,, Jersey, New Zealand, United Kingdom and United States of America [Order 23/08/05]</p>	<p>No prescribed criteria, but likely to be based on reciprocity. Based on reciprocity and/or availability of Uncitral model law provisions.</p>	<p>Yes.</p>
<p>Canada Bankruptcy and Insolvency Act as amended in 1996 <i>Natural persons</i> Companies Creditors Arrangements Act as amended in 1996 <i>Legal entities</i></p>	<p>Court may make orders and grant relief as considers appropriate to facilitate, approve or implement arrangements that will result in coordination of proceedings under BIA with any other proceedings. Has discretion to attach terms and conditions and apply legal and equitable rules within Acts. Foreign representative may seek stay of, or continue or commence proceedings.</p>	<p>All countries.</p>	<p>No designation required Note: Foreign representative is defined as person (other than debtor) assigned duties similar to those of trustee, liquidator, administrator or receiver appointed by court.</p>	<p>No.</p>

<p>China, People's Republic The Civil Procedure Law of PRC Chapter 29 "C" Judicial Assistance <i>Natural persons and Legal entities</i></p>	<p>People's Courts of China may be requested by foreign court for assistance in service of legal documents, investigation and collection of evidence, and recognition and enforcement of judgments and orders.</p>	<p>Any country in accordance with international treaties concluded or acceded to by PRC.</p>	<p>No designation required.</p>	<p>No.</p>
<p>Finland Nordic Bankruptcy Treaty/Convention 1933 <i>Natural persons and Legal entities</i></p> <p>EC Regulation on Insolvency Proceedings 2000 <i>Natural persons and Legal entities</i></p> <p>Bankruptcy Law <i>Natural persons and Legal entities</i></p>	<p>Proceedings opened in one Nordic country recognised in other Nordic countries.</p> <p>Collective proceedings opened in one member state in relation to insolvent with centre of main interests within EU recognised in all other member states. Has direct application and over-rides national legislation in relation to other EU states.</p> <p>Came into force in 2004 and will extend access to courts to foreign representatives of countries not parties to Nordic Bankruptcy Treaty/Convention and EC Regulation.</p>	<p>Denmark, Iceland and Norway: provisions relating to Sweden now superceded by EC Regulation 2000.</p> <p>EU member states, except Denmark.</p> <p>All other countries.</p>	<p>No designation required. Note: Applies to bankruptcy of natural persons and legal entities, not reorganisations. No designation required.</p> <p>No designation required.</p>	<p>Reciprocity between Nordic countries provided by Convention.</p> <p>Reciprocity between EU states provided by Regulation.</p> <p>No.</p>

Hong Kong SAR	Court of Final Appeal decision in 2000 held that a foreign representative could sue in that capacity in HK SAR to recover debt due to bankruptcy estate on evidence that representative had right to sue in own name under own law.	All countries.	No criteria prescribed.	No.
India	Uncitral Model Law being examined.			
Ireland Companies Act 1963-2001 <i>Legal entities</i>	Order in aid of court of non-EU countries in relation to company in course of winding up or reconstruction or reorganisation may be enforced at discretion of High Court as if order had been made by High Court.	UK (now superceded by EC Regulation 2000) and other jurisdictions designated by order of Minister.	Order of court of equivalent jurisdiction to High Court required.	No.
Companies Act 1963-2001 <i>Legal entities</i>	High Court may wind up company on request of foreign insolvency administrator	All countries	Requires there to be sufficient connection by company with the jurisdiction; reasonable benefit to those applying; and persons interested in distribution of assets are persons over whom High Court exercises control.	No.

<p>Ireland (cont) Bankruptcy Law <i>Natural persons</i></p> <p>EC Regulation on Insolvency Proceedings 2000</p> <p>Uncitral Model Law on Cross Border Insolvency</p>	<p>High Court has discretion to afford assistance by way of order in aid</p> <p>See Finland – above.</p> <p>Considered by Company Law Reform Group, and will require minor amendments to existing law to adopt.</p>	<p>Channel Islands, England & Wales, Isle of Man, Northern Ireland and other jurisdictions designated by order of Minister.</p>	<p>No criteria prescribed.</p>	<p>No.</p>
<p>Jersey Bankruptcy (Desastre) (Jersey) Law 1990, as amended</p> <p>Common law</p>	<p>Court must act in aid of designated countries and territories. Has discretion as to extent of aid given. Court may take account of Uncitral Model Law when considering requests from other jurisdictions. Surviving residuary jurisdiction based on comity, exercised on discretionary basis.</p>	<p>Australia, Finland, Guernsey, Isle of Man and UK.</p> <p>Unspecified: aid offered to BVI, Switzerland and Granada since 2000.</p>	<p>No criteria prescribed, but confirmation of reciprocity generally required: considered on formal request.</p> <p>As above.</p>	<p>Required in principle. Formal designation preferred.</p> <p>As above.</p>

<p>Malaysia Bankruptcy Act 1967 <i>Natural persons</i></p>	<p>Court shall act in aid of and be auxiliary to courts of Singapore; and any other designated country</p>	<p>Singapore. None yet designated</p>	<p>Reciprocal provision. No criteria prescribed.</p>	<p>Yes. Not prescribed.</p>
<p>Mexico Ley de Concursos Mercantiles 2000 <i>Merchants, both Natural persons and Legal entities</i></p>	<p>Incorporates Uncitral Model Law, with modifications: recognises foreign insolvency proceedings and provides assistance to foreign courts exercising insolvency jurisdiction, subject to designation/recognition.</p>	<p>All countries</p>	<p>Reciprocity.</p>	<p>Yes.</p>
<p>New Zealand Insolvency Act 1967 <i>Natural persons</i> Companies Act 1993 <i>Legal entities</i></p>	<p>Court shall act in aid of bankruptcy courts of Commonwealth countries; and may act in relation to bankruptcy courts of other countries. Court may admit application for liquidation of foreign company assets situated in NZ.</p>	<p>Commonwealth countries All other countries. All countries.</p>	<p>No designation required. No designation required. No designation required.</p>	<p>No. No. No.</p>

<p>Serbia* The Law of Bankruptcy Procedure 2004 <i>Registered private entrepreneurs, both Natural persons and Legal entities</i></p>	<p>Special provisions regarding international insolvency proceedings constituted in accordance with the Uncitral Model Law: foreign representative may directly approach local authorities.</p>	<p>All countries.</p>	<p>Debtor must have property in Serbian territory.</p>	<p>No.</p>
<p>Singapore</p>	<p>Court shall act in aid of and be auxiliary to courts of Malaysia; and any other designated countries.</p>	<p>Malaysia. None yet designated.</p>	<p>Reciprocal provision. No criteria prescribed.</p>	<p>Yes. Not prescribed.</p>
<p>South Africa Cross-Border Insolvency Act 42 of 2000</p>	<p>Enacts Uncitral Model Law, with modifications: see Mexico – above.</p>			
<p>Thailand</p>	<p>No provisions for recognition.</p>	<p>-</p>	<p>-</p>	<p>-</p>

<p>United Kingdom* Insolvency Act 1986 <i>Natural persons and Legal entities</i></p> <p>EC Regulation on Insolvency Proceedings 2000</p> <p>Insolvency Act 2000</p>	<p>Court shall assist foreign courts having corresponding jurisdiction in designated countries or territories. Notwithstanding “shall”, has discretion to reject request for assistance or grant on terms appropriate to case. Has inherent jurisdiction to admit applications from non-designated countries.</p> <p>See Finland – above.</p> <p>Regulation adopting Uncitral Model Law, with minor modifications and clarifications, came into force in April 2006</p>	<p>Australia, Brunei, Canada, Hong Kong, Malaysia, New Zealand, South Africa and twelve other Commonwealth countries/territories: designation in relation to Ireland now superceded by EC Regulation.</p> <p>All countries. Countries designated under s426 above can choose which route to follow.</p>	<p>No criteria prescribed: designation considered on formal request on country by country basis.</p> <p>Not required.</p>	<p>No.</p> <p>No.</p>
<p>United States of America United States Bankruptcy Code <i>Natural persons and Legal entities</i></p>	<p>Chapter 15, enacted in 2005, replaced s304 and adopted the Uncitral Model Law.</p>	<p>All countries.</p>	<p>Not required.</p>	<p>No.</p>

Note: In most, if not in all, jurisdictions, the insolvency of banks and insurance companies is governed by separate legislation, and outside the scope of Convention, Regulation and Model Law.

Updated/PRJ/May 2006