

## MEMORANDUM

TO: Joint Drafting Committee—Registration of Canadian Money Judgments

FROM: Thomas S. Hemmendinger

RE: UNCITRAL Model Law on Recognition and Enforcement of Insolvency-related Judgments—Summary<sup>1</sup>

DATE: October 27, 2018

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### 1) Scope.

- a) Recognition and enforcement of an insolvency-related judgment issued in another country. Art. 1(1).
- b) Under Art. 2(d), an “insolvency-related judgment” is a judgment:
  - i) That either
    - (1) Arises as a consequence of an insolvency proceeding; or
    - (2) Is materially associated with an insolvency proceeding; and
  - ii) Is issued on or after the start of the insolvency proceeding; and
  - iii) Is not the judgment commencing the insolvency proceeding.
- c) Exclusions:
  - i) A judgment to which a treaty applies. Art. 3(2).
  - ii) Catch-all exclusion that the United States can adopt. Art. 1(2).
- d) Any treaty obligations of the U.S. prevail over this Law. Art. 3(1).

### 2) Requirements for recognition and enforcement.

- a) The judgment has effect in the originating country. Art. 9, 13(a).

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<sup>1</sup> This summary was drafted from the perspective of the United States, as if it had adopted the Model Law, and a person is seeking enforcement in a federal or state court in the U.S.

- b) For enforcement, the judgment is enforceable in the originating country. Arts. 9 and 13(a).
  - c) The person seeking enforcement is either an insolvency representative or another person entitled to obtain recognition or enforcement under the laws of the originating country. Arts. 13(b) and 11(1).
  - d) The person seeking enforcement submits the following:
    - i) Certified copy of the insolvency-related judgment;
    - ii) Any documents (or other evidence satisfactory to the court) necessary to establish that the judgment has effect and, where applicable, is enforceable in the originating country;
    - iii) If the court requires, a translation of the documents. Art. 11(2) and (3).
  - e) The judgment debtor has the right to be heard on any request for recognition or enforcement. Art. 11(5).
  - f) If the person seeking enforcement satisfies these requirements, the court shall recognize and enforce the judgment, unless the court decides to apply one of the discretionary grounds for non-recognition and non-enforcement in Arts. 7, 10, or 14.
- 3) Discretionary Reasons for Not Recognizing or Enforcing the Judgment.
- a) Recognition or enforcement would be manifestly contrary to a public policy of this the U.S. (or, if in a state court, a public policy of the state), including fundamental principles of procedural fairness. Art. 7.
  - b) The appeal period has not expired. Art. 10(1).
  - c) The judgment is subject to review in the originating country. Art. 10(1).
  - d) The judgment debtor was not notified of the original suit in time to enable a defense. Art. 14(a)(i).
  - e) Service of process in the original suit was incompatible with the service and process rules of the U.S. or state court, as applicable. Art. 14(a)(ii).
  - f) The judgment was obtained by fraud. Art. 14(b).

- g) The judgment is inconsistent with a judgment in the U.S. involving the same parties. Art. 14(c).
- h) The judgment is inconsistent with an earlier judgment issued in another country in a dispute involving the same parties on the same subject matter, if the other judgment would also be eligible for recognition or enforcement in the U.S. Art. 14(d).
- i) Recognition and enforcement would interfere with the administration of the debtor's insolvency proceeding. Art 14(e).
- j) The judgment affects the rights of creditors generally and the interests of creditors and other interested persons were not adequately protected in the original suit. Art 14(f).
- k) The court did not have personal jurisdiction of the judgment debtor. Art. 14(g).
- l) The judgment originates from a country whose insolvency proceedings would not be recognizable under Chapter 15 of the U.S. Bankruptcy Code (U.S. adoption of the UNCITRAL Model Law on Cross-Border Insolvency). Art. 14(h).

#### 4) Relief Available.

- a) The judgment will be given the same effect in the U.S. as it had in the originating country. Art. 15(a).
- b) However, if the judgment provides for relief not available in the U.S., that relief will be tailored to provide equivalent relief, but not more relief than is available in the U.S. Art. 15(b).
- c) The relief available under Chapter 15 of the U.S. Bankruptcy Code includes recognition and enforcement of an insolvency-related judgment. Art. X.

#### 5) Provisional Relief.

- a) Where relief is urgently needed to preserve the possibility of recognizing and enforcing the judgment, the court may:
  - i) Stay the disposition of assets of a judgment debtor.
  - ii) Grant other legal or equitable relief within the scope of the judgment. Art. 12(1).

- b) Unless the court orders otherwise, provisional relief terminates when the court decides whether to recognize and enforce the judgment. Art. 12(3).