

## FAIR 2021

### UNCITRAL Model Law on Recognition and Enforcement of Insolvency- Related Judgments

The new Model Law (ML) was adopted on 2<sup>nd</sup> July 2018 together with its Guide to Enactment<sup>1</sup>. The work on this topic had its origin, in part, in certain judicial decisions<sup>1</sup> that led to uncertainty concerning the ability of courts to recognize and enforce judgments given in the course of foreign insolvency proceedings, such as judgments issued in avoidance proceedings, on the basis that the MLCBI did not explicitly authorise this. As with all model laws, some fine-tuning may be applied by enacting states, and the following note describes the ML adopted as a recommendation to nations. The full text of the ML is available here on the UNCITRAL web site<sup>2</sup>.

#### Purposes

The purposes of this Law are quite simple and straightforward: -

1. to create greater certainty as regards recognition and enforcement of insolvency-related judgments (IRJ);
2. to avoid the unnecessary duplication of insolvency proceedings;
3. to ensure timely and cost-effective recognition and enforcement of IRJ;
4. to promote comity and cooperation between jurisdictions; to maximize the value of insolvency estates; and
5. to complement the UNCITRAL Model Law on Cross-Border Insolvency.

#### What judgments are included?

For the purposes of the ML, Judgment means any decision, whatever called, of a court or administrative authority, where the administrative decision has the same effect as a court decision. This includes decrees or orders, and determinations of costs and expenses. Interim measures of protection are not included.

#### Who is authorised to act?

The functions referred to in the ML are to be performed by the courts or authorities that perform those functions in the enacting State and by any other court before which the issue of recognition arises.

The ML authorizes the IP to act in another State with respect to an IRJ but only to the extent permitted by the applicable foreign law. This is an important safety assurance for enacting states. These are the “outbound” authorisations.

There are equivalent “inbound” provisions authorising a foreign IP entitled under the law of the originating State to seek recognition and enforcement of an IRJ to seek recognition and enforcement of that judgment including when the issue of recognition is raised as a defence or as an incidental question.

#### Conditions of an application

An application for recognition and enforcement of an IRJ must be accompanied by a certified copy of the IRJ and proof that the IRJ has effect and, where applicable, is enforceable in the originating State, including information on any pending review of the judgment.

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<sup>1</sup> [A/CN.9/WG.V/WP.157](#)

<sup>2</sup> <https://uncitral.un.org/en/texts/insolvency/modellaw/mlj>

**Effect of recognition**

The IRJ shall be recognized and enforced only if it has effect and is enforceable in the originating State. Moreover, the IRJ recognized or enforceable under this Law has (only) the same effect as it has in the originating State. Where relief is urgently needed to preserve the possibility of recognizing and enforcing an insolvency-related judgment, the court may, at the request of an IP, grant relief of a provisional nature.

**Grounds to refuse recognition and enforcement of an IRJ**

There are numerous protections against the improper or inappropriate enforcement of IRJs. The most likely defences will include: -

1. where the party against whom the proceeding giving rise to the IRJ was instituted was not given sufficient notice of the proceedings;
2. judgment was obtained by fraud;
3. the IRJ is inconsistent with either a judgment issued in this State or with an earlier judgment issued in another State;
4. recognition and enforcement would interfere with the administration of the debtor's insolvency proceedings;
5. the IRJ materially affects the rights of creditors generally; or,
6. the originating court exercised its jurisdiction inappropriately.

**Reference to the MLCBI**

Where appropriate, it is suggested that the enactment is cross-referred to the MLCBI.