
EXPLANATORY NOTE

(This note is not part of the Regulations)

On 30th May 1997 the United Nations Commission on International Trade Law (“UNCITRAL”) adopted the text of a model law on cross-border insolvency, which was approved by a resolution of the United Nations General Assembly on 15th December 1997. These Regulations give effect to the model law in Great Britain.

Regulation 2 of the Regulations provides that the UNCITRAL model law shall have the force of law in Great Britain in the form set out in Schedule 1 to the Regulations (the Model Law) and provides that in interpreting the Model Law the courts can have regard to other documents including the Guide to Enactment of the Model Law published by UNCITRAL (ISBN 92-1-133608-2). The model law and Guide may be accessed at <http://www.uncitral.org/uncitral/en/uncitral-texts/insolvency/1997Model.html>.

Chapter I of the Model Law contains General Provisions (articles 1 to 8). Article 1 sets out the scope of application of the Model Law, which may apply in a number of cross-border situations, and also lists certain bodies to which the Model Law does not apply. Article 3 of the Model Law clarifies that Council Regulation (EC) No. 1346/2000 of 29th May 2000 on Insolvency Proceedings prevails over the Model Law.

Chapter II (articles 9 to 14) relates to the access of foreign representatives and creditors to courts in Great Britain and their rights to participate in an insolvency proceeding in Great Britain. Chapter III of the Model Law deals with recognition of foreign proceedings and relief. Articles 15 to 17 set out criteria for determining whether a foreign proceeding is to be recognised and, if so whether as a foreign main proceeding or as a foreign non-main proceeding (see articles 16, 17 and definitions in article 2).

Articles 19 to 21 set out the effects of recognition and the relief available to a foreign representative. The relief accorded upon recognition of a foreign main proceeding is listed in article 20(1). Article 21 of the Model Law provides for the court to grant discretionary relief for the benefit of any recognised foreign proceeding, whether main or non-main. Urgently needed relief may be granted by the court on an interim basis pending a decision on recognition (article 19).

Chapter IV of the Model Law provides for the British courts and British insolvency officeholders to cooperate with foreign courts or foreign representatives in the areas covered by the Model Law (articles 25 to 27).

Chapter V of the Model Law (articles 28 to 32) provides for the coordination of a British insolvency proceeding and a foreign proceeding concerning the same debtor and facilitates coordination between two or more foreign proceedings concerning the same debtor.

Schedule 2 to the Regulations sets out procedural matters in relation to proceedings under the Model Law in England and Wales. Parts 2 to 5 of the Schedule contain details of the form and content of specified applications under the Model Law and Part 6 sets out more detailed procedural requirements in respect of those applications. Part 7 of Schedule 2 provides for applications to be made in appropriate cases to the Chief Land Registrar in connection with court orders under the Regulations. Part 8 provides for a summary remedy against foreign representatives guilty of misfeasance. Parts 9 to 12 contain general provision as to court procedure and practice and appeals in connection with proceedings under the Regulations, costs and other general matters.

Schedule 3 of the Regulations sets out miscellaneous procedural matters in relation to proceedings under the Model Law in Scotland.

Schedule 4 makes provision in relation to notices delivered to the registrar of companies under the Regulations.

Changes to legislation: There are currently no known outstanding effects for the
The Cross-Border Insolvency Regulations 2006. (See end of Document for details)

Schedule 5 contains forms prescribed for use in connection with proceedings under the Regulations.

A full regulatory impact assessment has not been produced for this instrument as it has a negligible impact on the costs of business.

Changes to legislation:

There are currently no known outstanding effects for the The Cross-Border Insolvency Regulations 2006.