

Version  
as at 1 July 2022



## Insolvency (Cross-border) Act 2006

Public Act      2006 No 57  
Date of assent      7 November 2006  
Commencement      see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

## Schedule 2 Consequential amendments

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### 1 Title

This Act is the Insolvency (Cross-border) Act 2006.

### 2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (2) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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#### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 2: Insolvency (Cross-border) Act 2006 brought into force, on 24 July 2008, by the Insolvency (Cross-border) Act Commencement Order 2008 (SR 2008/171).

Section 2(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### 3 Purpose

The purpose of this Act is to—

- (a) implement the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997, (amended and supplemented in order to apply to New Zealand) in New Zealand; and
- (b) provide a framework for facilitating insolvency proceedings when—
  - (i) a person is subject to insolvency administration (whether personal or corporate) in 1 country, but has assets or debts in another country; or
  - (ii) more than 1 insolvency administration has commenced in more than 1 country in relation to a person.

### 4 Interpretation

In this Act,—

**insolvency proceeding** means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency (whether personal or corporate) in which the assets and affairs of a debtor are subject to control or supervision by a judicial or other authority competent to control or supervise that proceeding, for the purpose of reorganisation or liquidation

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

## **5 Further provision relating to interpretation**

- (1) In interpreting this Act, reference may be made to—
  - (a) the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997; and
  - (b) any document that relates to the Model Law on Cross-Border Insolvency that originates from the United Nations Commission on International Trade Law, or its working group for the preparation of the Model Law on Cross-Border Insolvency.
- (2) Subsection (1) does not limit article 8 of Schedule 1.

## **6 Act binds the Crown**

This Act binds the Crown.

## **7 Application of Model Law on Cross-Border Insolvency in New Zealand**

Schedule 1 applies in the circumstances set out in article 1 of that schedule.

## **8 High Court to act in aid of overseas courts**

- (1) This section applies to a person referred to in article 1(1) of Schedule 1.
- (2) If a court of a country other than New Zealand has jurisdiction in an insolvency proceeding and makes an order requesting the aid of the High Court in relation to the insolvency proceeding of a person to whom this section applies, the High Court may, if it thinks fit, act in aid of and be auxiliary to that court in relation to that insolvency proceeding.
- (3) In acting in aid of and being auxiliary to a court in accordance with subsection (2), the High Court may exercise the powers that it could exercise in respect of the matter if it had arisen within its own jurisdiction.

## **9 Power to make rules**

Rules may be made under section 148 of the Senior Courts Act 2016—

- (a) relating to the procedure of the High Court under this Act; and

- (b) relating to the manner in which an application under Schedule 1 must be made to the High Court; and
- (c) to give effect to this Act.

Section 9: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

## 10 Regulations may prescribe specified insolvency proceedings

- (1) On the recommendation of the Minister, the Governor-General may, by Order in Council, make regulations designating a class of insolvency proceeding, in a designated country other than New Zealand (referred to in this section as the **foreign country**), to be a specified insolvency proceeding.
- (2) The Minister must not recommend the making of regulations under subsection (1) unless the Minister is satisfied that—
  - (a) New Zealand and the foreign country are both parties to an agreement for the mutual recognition of insolvency proceedings; and
  - (b) the level of recognition given to the interests of New Zealand debtors and creditors in an insolvency proceeding in the foreign country and the terms of the agreement referred to in paragraph (a) provide appropriate protection for the interests of New Zealand debtors and creditors.
- (3) A regulation made under subsection (1) may specifically modify or vary Schedule 1 in its application to a specified insolvency proceeding.
- (4) Subsection (3) prevails over section 7.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 10(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 11 Regulations

- (1) The Governor-General may, by Order in Council, make regulations prescribing forms to be used for the purposes of this Act, and the matters to be specified in the forms.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 11(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

**12 Transitional provisions for this Act**

- (1) If an insolvency proceeding has started before the commencement of this Act, the law governing that insolvency proceeding is the law that would have applied if this Act had not been passed.
- (2) For the purposes of subsection (1), an insolvency proceeding is taken to have started on the date upon which the judicial manager, Official Assignee, statutory manager, receiver, liquidator, or administrator was appointed.

**13 Consequential amendments to other enactments**

The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

## Schedule 1

### Rules applying to cross-border insolvency proceedings

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[The provisions of this schedule correspond, for the most part, to the provisions of the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997, and approved by the General Assembly of the United Nations on 15 December 1997 (General Assembly Resolution 52/158). Certain changes have been made to amend or supplement the provisions of the Model Law in its application to New Zealand.]

#### *Preamble*

The purpose of this Schedule is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) co-operation between the courts and other competent authorities of New Zealand and foreign States involved in cases of cross-border insolvency;
- (b) greater legal certainty for trade and investment;
- (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) protection and maximisation of the value of the debtor's assets; and
- (e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

### Chapter I. General provisions

#### *Article 1. Scope of application*

- (1) Except as provided in paragraph (2) of this article, this Schedule applies where:
  - (a) assistance is sought in New Zealand by a foreign court or a foreign representative in connection with a foreign proceeding; or
  - (b) assistance is sought in a foreign State in connection with a New Zealand insolvency proceeding; or
  - (c) a foreign proceeding and a New Zealand insolvency proceeding in respect of the same debtor are taking place concurrently; or
  - (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participation in, a New Zealand insolvency proceeding.

- (2) This Schedule does not apply to a registered bank within the meaning of section 2(1) of the Banking (Prudential Supervision) Act 1989 that is subject to statutory management under that Act.

Schedule 1 Article 1(2): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

## *Article 2. Definitions*

For the purposes of this Schedule:

- (a) **foreign proceeding** means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (b) **foreign main proceeding** means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) **foreign non-main proceeding** means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article;
- (d) **foreign representative** means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;
- (e) **foreign court** means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) **establishment** means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;
- (g) **High Court or Court** means the High Court of New Zealand;
- (h) **insolvency administrator** means—
  - (i) a statutory manager appointed under subpart 4 of Part 4 of the Insurance (Prudential Supervision) Act 2010; or
  - (ii) the Official Assignee within the meaning of section 3 of the Insolvency Act 2006; or
  - (iii) a statutory manager appointed under section 38 of the Corporations (Investigation and Management) Act 1989; or
  - (iv) a receiver within the meaning of section 2(1) of the Receiverships Act 1993; or
  - (v) a liquidator appointed under Part 16 of the Companies Act 1993 or under any other Act; or

- (vi) an administrator within the meaning of section 239B of the Companies Act 1993;
- (i) **New Zealand insolvency proceeding** means a collective judicial or administrative proceeding pursuant to the law in New Zealand relating to the bankruptcy, liquidation, receivership, judicial management, statutory management, or voluntary administration of a debtor, or the reorganisation of the debtor's affairs, under which the assets and affairs of the debtor are administered, or the assets of the debtor are or will be realised, for the benefit of secured or unsecured creditors.

Schedule 1 article 2 paragraph (h)(i): substituted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

### *Article 3. International obligations of New Zealand*

No action may be taken under this Schedule that conflicts with an obligation of New Zealand arising out of any treaty or other form of agreement to which New Zealand is a party with one or more other States.

### *Article 4. High Court to have jurisdiction*

The functions referred to in this Schedule relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by the High Court.

### *Article 5. Authorisation of insolvency administrator to act in a foreign State*

An insolvency administrator is authorised to act in a foreign State on behalf of a New Zealand insolvency proceeding, as permitted by the applicable foreign law.

### *Article 6. Public policy exception*

- (1) Nothing in this Schedule prevents the High Court from refusing to take an action governed by this Schedule if the action would be manifestly contrary to the public policy of New Zealand.
- (2) Before the Court refuses to take an action under paragraph (1) of this article, the Court shall consider whether it is necessary for the Solicitor-General to appear and be heard on the question of the public policy of New Zealand.

### *Article 7. Additional assistance under other laws*

Nothing in this Schedule limits the power of a court or an insolvency administrator to provide additional assistance to a foreign representative under other laws of New Zealand.



*Article 8. Interpretation*

In the interpretation of this Schedule, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

**Chapter II. Access of foreign representatives and creditors to courts  
in New Zealand**

*Article 9. Right of direct access*

A foreign representative is entitled to apply directly to the High Court.

*Article 10. Limited jurisdiction*

The sole fact that an application pursuant to this Schedule is made to the High Court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Court for any purpose other than the application.

*Article 11. Application by a foreign representative to commence a New Zealand insolvency proceeding*

A foreign representative is entitled to apply to commence a New Zealand insolvency proceeding if the conditions for commencing such a proceeding are otherwise met.

*Article 12. Participation of a foreign representative in a New Zealand insolvency proceeding*

Upon recognition by the High Court of a foreign proceeding, the foreign representative is entitled to participate in a New Zealand insolvency proceeding regarding the debtor.

*Article 13. Access of foreign creditors to a New Zealand insolvency proceeding*

- (1) Subject to paragraph (2) of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a New Zealand insolvency proceeding as creditors in New Zealand.
- (2) Paragraph (1) of this article does not affect the ranking of claims in a New Zealand insolvency proceeding or the exclusion of foreign tax and social security claims from such a proceeding.

*Article 14. Notification to foreign creditors of a New Zealand insolvency proceeding*

- (1) Whenever, under a New Zealand insolvency proceeding, notification is to be given to creditors in New Zealand, such notification shall also be given to the known creditors that do not have addresses in New Zealand. The High Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality are required.
- (3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:
  - (a) indicate a reasonable time period for filing claims and specify the place for their filing;
  - (b) indicate whether secured creditors need to file their secured claims; and
  - (c) contain any other information required to be included in such a notification to creditors pursuant to the law of New Zealand and the orders of the Court.

### **Chapter III. Recognition of a foreign proceeding and relief**

*Article 15. Application for recognition of a foreign proceeding*

- (1) A foreign representative may apply to the High Court for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (2) An application for recognition shall be accompanied by:
  - (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
  - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
  - (c) in the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

- (4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of New Zealand.

*Article 16. Presumptions concerning recognition*

- (1) If the decision or certificate referred to in paragraph (2) of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the High Court is entitled to so presume.
- (2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
- (3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

*Article 17. Decision to recognise a foreign proceeding*

- (1) Subject to article 6, a foreign proceeding shall be recognised if:
  - (a) the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2;
  - (b) the foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;
  - (c) the application meets the requirements of paragraph (2) of article 15; and
  - (d) the application has been submitted to the High Court.
- (2) The foreign proceeding shall be recognised:
  - (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
  - (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.
- (3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (4) As soon as practicable, after the Court recognises the foreign proceeding under paragraph (1) of this article, the foreign representative shall notify the debtor, in the prescribed form, that the application has been recognised.
- (5) The provisions of articles 15, 16, 17, and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

*Article 18. Subsequent information*

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the High Court promptly of:

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

*Article 19. Relief that may be granted upon application for recognition of a foreign proceeding*

- (1) From the time of filing an application for recognition until the application is decided upon, the High Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:
  - (a) staying execution against the debtor's assets;
  - (b) entrusting the administration or realisation of all or part of the debtor's assets located in New Zealand to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
  - (c) any relief mentioned in paragraph (1)(c) and (d) of article 21.
- (2) As soon as practicable, after the Court grants relief under paragraph (1) of this article, the foreign representative shall notify the debtor, in the prescribed form, of the relief that has been granted.
- (3) Unless extended under paragraph (1)(f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.
- (4) The Court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

*Article 20. Effects of recognition of a foreign main proceeding*

- (1) Upon recognition by the High Court of a foreign proceeding that is a foreign main proceeding,
  - (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities is stayed;
  - (b) execution against the debtor's assets is stayed; and

- (c) the right to transfer, encumber, or otherwise dispose of any assets of the debtor is suspended.
- (2) Paragraph (1) of this article does not prevent the Court, on the application of any creditor or interested person, from making an order, subject to such conditions as the Court thinks fit, that the stay or suspension does not apply in respect of any particular action or proceeding, execution, or disposal of assets.
- (3) Paragraph (1)(a) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- (4) Paragraph (1) of this article does not affect the right to request the commencement of a New Zealand insolvency proceeding or the right to file claims in such a proceeding.

*Article 21. Relief that may be granted upon recognition of a foreign proceeding*

- (1) Upon recognition by the High Court of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including:
  - (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities, to the extent they have not been stayed under paragraph (1)(a) of article 20;
  - (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1)(b) of article 20;
  - (c) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph (1)(c) of article 20;
  - (d) providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor's assets, affairs, rights, obligations, or liabilities;
  - (e) entrusting the administration or realisation of all or part of the debtor's assets located in New Zealand to the foreign representative or another person designated by the Court; and
  - (f) extending relief granted under paragraph (1) of article 19.
- (2) Upon recognition by the High Court of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in New Zealand to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in New Zealand are adequately protected.

- (3) In granting relief under this article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of New Zealand, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

*Article 22. Protection of creditors and other interested persons*

- (1) In granting or denying relief under article 19 or article 21, or in modifying or terminating relief under paragraph (3) of this article, the High Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (2) The Court may subject relief granted under article 19 or article 21 to conditions it considers appropriate.
- (3) The Court may, at the request of the foreign representative or a person affected by relief granted under article 19 or article 21, or at its own motion, modify or terminate such relief.
- (4) The Court must, on application of the statutory manager, terminate the relief granted under article 19 or article 21 if—
  - (a) an application for recognition has been made in respect of a debtor that is a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989;
  - (b) the Court has granted that application or the Court has granted relief under article 19; and
  - (c) the debtor is placed in statutory management after that application or relief has been granted.

*Article 23. Actions to avoid acts detrimental to creditors*

- (1) Upon recognition by the High Court of a foreign proceeding, the foreign representative has standing to initiate any action that an insolvency administrator may take in respect of a New Zealand insolvency proceeding that relates to a transaction (including any gifts or improvement of property or otherwise), security, or charge that is voidable or may be set aside or altered.
- (2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the law of New Zealand, should be administered in the foreign non-main proceeding.
- (3) To avoid any doubt, nothing in paragraph (1) of this article affects the doctrine of relation back as it is applied in New Zealand.

*Article 24. Intervention by a foreign representative in New Zealand insolvency proceeding*

Upon recognition by the High Court of a foreign proceeding, the foreign representative may, provided the requirements of the law of New Zealand are met, intervene in any proceeding in which the debtor is a party.

**Chapter IV. Co-operation with foreign courts and foreign representatives**

*Article 25. Co-operation and direct communication between the High Court and foreign courts or foreign representatives*

- (1) In matters referred to in paragraph (1) of article 1, the High Court shall co-operate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency administrator.
- (2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

*Article 26. Co-operation and direct communication between the insolvency administrator and foreign courts or foreign representatives*

- (1) In matters referred to in paragraph (1) of article 1, an insolvency administrator shall, in the exercise of its functions and subject to the supervision of the High Court, co-operate to the maximum extent possible with foreign courts or foreign representatives.
- (2) The insolvency administrator is entitled, in the exercise of its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

*Article 27. Forms of co-operation*

Co-operation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

- (a) appointment of a person or body to act at the direction of the High Court;
- (b) communication of information by any means considered appropriate by the Court;

- (c) co-ordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the co-ordination of proceedings; and
- (e) co-ordination of concurrent proceedings regarding the same debtor.

## Chapter V. Concurrent proceedings

### *Article 28. Commencement of a New Zealand insolvency proceeding after recognition of a foreign main proceeding*

After recognition by the High Court of a foreign main proceeding, a New Zealand insolvency proceeding may be commenced only if the debtor has assets in New Zealand; the effects of that proceeding shall be restricted to the assets of the debtor that are located in New Zealand and, to the extent necessary to implement co-operation and co-ordination under articles 25, 26, and 27, to other assets of the debtor that, under the law of New Zealand, should be administered in that proceeding.

### *Article 29. Co-ordination of a New Zealand insolvency proceeding and a foreign proceeding*

Where a foreign proceeding and a New Zealand insolvency proceeding are taking place concurrently regarding the same debtor, the High Court shall seek co-operation and co-ordination under articles 25, 26, and 27, and the following shall apply:

- (a) when the New Zealand insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed,
  - (i) any relief granted under article 19 or article 21 must be consistent with the New Zealand insolvency proceeding;
  - (ii) if the foreign proceeding is recognised in New Zealand as a foreign main proceeding, article 20 does not apply;
- (b) when the New Zealand insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,
  - (i) any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the New Zealand insolvency proceeding; and
  - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of article 20 shall be



- modified or terminated pursuant to paragraph (2) of article 20 if inconsistent with the New Zealand insolvency proceeding;
- (c) in granting, extending, or modifying relief granted to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of New Zealand, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

*Article 30. Co-ordination of more than one foreign proceeding*

In matters referred to in paragraph (1) of article 1, in respect of more than one foreign proceeding regarding the same debtor, the High Court shall seek co-operation and co-ordination under articles 25, 26, and 27, and the following shall apply:

- (a) any relief granted under article 19 or article 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or article 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding; and
- (c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify, or terminate relief for the purpose of facilitating co-ordination of the proceedings.

*Article 31. Presumption of insolvency based on recognition of a foreign main proceeding*

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a New Zealand insolvency proceeding, proof that the debtor is insolvent.

*Article 32. Rule of payment in concurrent proceedings*

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a New Zealand insolvency proceeding regarding the same

debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

## Schedule 2 Consequential amendments

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### **Companies Act 1993 (1993 No 105)**

Heading to section 342: omit “**assets in New Zealand**” and substitute “**overseas company**”.

Section 342(1): omit “the assets in New Zealand of”.

Heading to Schedule 9: omit “**of assets**”.

Clause 1 of Schedule 9: omit “the assets in New Zealand of”.

Clause 1(a) and (e) of Schedule 9: repeal.

Clause 2 of Schedule 9: omit “the assets of”.

### **Judicature Act 1908 (1908 No 89)**

Section 26I(2): add:

(1) the Model Law on Cross-Border Insolvency as set out in Schedule 1 of the Insolvency (Cross-border) Act 2006.

Schedule 2: insert after rule 458D(1)(a)(vii):

(viiia) the Model Law on Cross-Border Insolvency as set out in Schedule 1 of the Insolvency (Cross-border) Act 2006:

## Notes

### **1** *General*

This is a consolidation of the Insolvency (Cross-border) Act 2006 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)

Secondary Legislation Act 2021 (2021 No 7): section 3

Senior Courts Act 2016 (2016 No 48): section 183(b)

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(2)

Insolvency (Cross-border) Act Commencement Order 2008 (SR 2008/171)